

DISPOSITION AND DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF SAN LEANDRO

AND

CAL COAST COMPANIES LLC, INC.

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into as of February 24, 2020 (the “**Agreement Date**”), by and between the City of San Leandro, a California charter city organized and existing under the laws of the State of California (“**City**”), and Cal Coast Companies LLC, Inc., a Delaware corporation doing business in California as Cal Coast Developer, Inc. (“**Developer**”). City and Developer are referred to individually as “**Party**,” and collectively as the “**Parties**.”

RECITALS

This Agreement is entered into upon the basis of the following facts, understandings and intentions of City and Developer.

A. The City seeks development of certain City-owned property consisting of approximately seventy-five (75) acres located within the City limits in the Shoreline-Marina area as depicted in Exhibit A attached hereto (the “**Property**”).

B. The City previously entered into an Exclusive Negotiating Rights Agreement with Developer on April 2, 2012 regarding development of the Property, which the Parties have subsequently amended from time to time.

C. Developer desires to develop the Property with a multi-component development that includes, but is not limited to construction of, single and multifamily for sale residential units (“**Single Family Element**”), reconstruction of an existing golf course (“**Golf Course Element**”), a hotel (“**Developer Hotel Element**”), a multifamily apartment complex (“**Multifamily Element**”), a restaurant (“**Developer Restaurant Element**”), a market (“**Market Element**”), reconstruction of Monarch Bay Drive (the “**Monarch Bay Drive Element**”), and associated infrastructure and public improvements (“**Infrastructure Element**”) (as defined more fully in Section 1.4 below, the “**Project**”). The elements of the Project to be developed by Developer are described below:

(1) The Single Family Element consists of the design and construction of between 200 and 215 detached and attached single-family homes and attached townhomes that include affordable units in accordance with the requirements of the City’s inclusionary housing ordinance as specified herein;

(2) The Golf Course Element consists of the redesign and reconstruction of a nine hole links style golf course;

(3) The Developer Hotel Element consist of the design and construction of a hotel with between 200 and 220 rooms, publicly accessible outdoor space, and an approximately 5000 square foot restaurant;

(4) The Multifamily Element consists of the design and construction of a market-rate multifamily residential development with approximately 285 rental units;

(5) The Developer Restaurant Element consists of the design and construction of an approximately 15,000 square foot restaurant and banquet facility;

(6) The Market Element consists of the design and construction of an approximately 3,000 square foot single-story free-standing building shell to house a market or other neighborhood serving retail or service facility;

(7) The Monarch Bay Drive Element consist of the redesign and reconstruction of Monarch Bay Drive in conformance with City requirements and standards; and

(8) Developer's portion of the Infrastructure Element consists of the design and construction of certain improvements in the public right-of-way, which provide service and access to the Project Elements.

D. City desires to advance the development of the Shoreline-Marina area to create new housing units, lodging and restaurants, new facilities to foster economic growth, and new recreational opportunities for the public, as well as promoting the productive use of property and encouraging quality development and economic growth, thereby enhancing employment and recreation opportunities for residents and expanding City's tax base. The elements of the Project to be developed by City are described below:

(1) design and reconstruct Monarch Bay Park and associated publicly-accessible trail elements ("**Park Element**");

(2) perform demolition at the San Leandro Marina Harbor adjacent to the Property in conformance with plans approved by the City, the San Francisco Bay Conservation and Development Commission (BCDC) and other applicable agencies ("**Harbor Element**");

(3) reconstruct the Mulford-Marina Branch Library ("**Library Element**");
and

(4) City's portion of the Infrastructure Element consists of the design and construction of certain improvements in the public right-of-way, which provide service and access to the Project Elements.

The elements to be constructed by Developer and City are collectively referred to herein as the "**Elements.**"

E. In connection with the Developer's construction of the Project, the City desires to design and construct Monarch Bay Park, to be located on a portion of the peninsula portion of the Property. The City shall be responsible for the design and construction of surface improvements for the Park Element. Developer shall deposit engineered soil on the Park Parcel, in accordance with the requirements of Section 2.7.

F. In order to facilitate construction of the Project, the City and the Developer shall enter into certain land disposition agreements, leases, access agreements, construction agreements and other definitive agreements pertaining to the sale or lease of portions of the Property and for construction of the Project, as further described in this Agreement.

G. Developer has agreed to cooperate with the City in the formation of a Community Facilities District (the “**District**”) under the Mello-Roos Community Facilities Act of 1982 (Government Code § 53311 *et. seq.*). Developer agrees that the District shall include all of the Property and any improvements constructed thereon. Special taxes derived from the District will be used to pay for public area maintenance, public area utilities, reserves and capital expenditures for public infrastructure, and administration of the District.

H. City has determined that by entering into this Development Agreement: (1) City will ensure the productive use of property and foster orderly growth and quality development in the City; (2) development will proceed in accordance with the goals and policies set forth in the City of San Leandro General Plan (the “**General Plan**”) and will implement City’s stated General Plan policies; (3) City will receive increased tax revenues; and (4) City will benefit from increased housing, lodging, restaurant, employment, economic and recreational opportunities for residents and businesses of the City that are created by the Project.

I. City has undertaken, pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*, hereinafter “**CEQA**”), the required analysis of the environmental effects that would be caused by the Project and has determined those feasible mitigation measures which will eliminate, or reduce to an acceptable level, the adverse environmental impacts of the Project. The environmental effects of the proposed development of the Property were analyzed by the Final Environmental Impact Report (the “**FEIR**”) certified by Resolution 2015-125, adopted by the City Council on July 20, 2015. City has also adopted a mitigation monitoring and reporting program (the “**MMRP**”) to ensure that those mitigation measures incorporated as part of, or imposed on, the Project are enforced and completed. Those mitigation measures for which Developer is responsible are incorporated into, and required by, the Project Approvals. The City adopted an addendum to the FEIR (the “**FEIR Addendum**”) based upon changes in the Project after the FEIR was certified by the City Council. The FEIR Addendum was certified by Resolution _____ adopted by the City Council on February 24, 2020.

J. The use and development of the Property pursuant to this Agreement will provide substantial employment and property tax benefits, and contribute to the provision of needed infrastructure, recreational facilities, and housing for area growth, thereby achieving the goals and objectives of the City. This Agreement will provide for the development of the Shoreline area with a resilient and self-sustaining mix of housing, recreation, public amenities and hospitality consistent with the vision of the City’s General Plan.

K. The City Council finds that the economic interests of City’s residents and the public health, safety and welfare will be best served by entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, City and Developer agree as follows:

ARTICLE 1.
GENERAL PROVISIONS

1.1. Parties and Responsibilities.

1.1.1. City. City is a California charter city, with offices located at 835 East 14th Street, San Leandro, CA 94577-3767. “City,” as used in this Agreement, includes City and any assignee of or successor to its rights, powers and responsibilities.

1.1.2. Developer. Developer is a Delaware corporation with offices located at 11755 Wilshire Blvd. Suite 1660, Los Angeles, California 90025. “Developer,” as used in this Agreement, includes any permitted assignee or successor-in-interest as herein provided.

1.1.3. Responsibilities of City Generally. The Parties acknowledge and agree that Developer’s agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer’s decision to develop the Project in the City, is a material consideration for City’s agreement to perform and abide by the long term covenants and obligations of City set forth herein. City shall cooperate with Developer and shall undertake such actions as may be reasonably necessary to ensure that this Agreement remains in full force and effect.

1.1.4. Responsibilities of Developer Generally. The Parties acknowledge and agree that the Developer’s agreement to perform and abide by the covenants and obligations of Developer set forth in this Agreement is a material consideration for City’s agreement to perform and abide by its long term covenants and obligations, as set forth herein. The Parties acknowledge that many of Developer’s long term obligations set forth in this Agreement are in addition to Developer’s agreement to perform all the mitigation measures identified in the EIR and the Mitigation Monitoring and Reporting Program.

1.2. Property Subject to this Agreement.

The Property consisting of approximately seventy-five (75) acres located within the City limits in the Shoreline-Marina area, as depicted in Exhibit A, is subject to this Agreement. The Developer shall prepare and obtain City approval of a vesting tentative map as a Project Approval pursuant to the Subdivision Map Act, Government Code Section 66410, et seq., to create the parcels listed below.

- a. Parcel A - Library. City shall retain title to parcel A.
- b. Parcel B - Golf Course. City shall retain title to parcel B.
- c. Parcel C - Single Family Homes (Townhome and Detached). Subject to the Developer satisfying all conditions precedent to conveyance as set forth in the Single Family PSA, City shall transfer fee title to parcel C to Developer.
- d. Parcel D - Existing Pump Station. City shall retain title to parcel D.

- e. Parcel E - Existing Water Treatment Plant. City shall retain title to parcel E (except as otherwise approved in the tentative parcel map that is approved by City).
- f. Parcel F - Existing Restaurant. City shall retain title to parcel F.
- g. Parcel G - Existing Hotel. City shall retain title to parcel G.
- h. Parcel H - Multifamily Housing. Subject to the Developer satisfying all conditions precedent to ground lease commencement set forth herein, City shall lease ground parcel H to Developer. A portion of Parcel H will be subject to an easement for the Bay Trail and other public purposes and uses, which will provide for City maintenance of the easement area. There is currently a restroom, boat launch ramp and other improvements located on Parcel H, which will remain in place as of the commencement of the Multifamily Ground Lease.
- i. Parcel I - Developer Hotel. Subject to the Developer satisfying all conditions precedent to ground lease commencement set forth herein, City shall ground lease parcel I to Developer. There is currently an existing restaurant building located on Parcel I, which will remain in place as of the commencement of the Developer Hotel Ground Lease.
- j. Parcel J - Developer Restaurant. Subject to the Developer satisfying all conditions precedent to ground lease commencement set forth herein, City shall ground lease parcel J to Developer. The Developer Restaurant Element shall have an easement over parcel I for parking and access.
- k. Parcel K – Market. Subject to the Developer satisfying all conditions precedent to ground lease commencement set forth herein, City shall ground lease parcel K to Developer. The Market Element shall have an easement over Parcel I for parking and access.
- l. Parcel L – Park and Harbor Basin. City shall retain title to parcel L.

1.3. Term of the Agreement.

The term (“**Term**”) of this Agreement shall commence upon the Effective Date and continue in full force and effect for a period ending on the first to occur of (i) ten (10) years from the Effective Date, (ii) the date all construction required by this Agreement has been completed, or (iii) the termination of this Agreement as provided herein. The Term has been established by the Parties as a reasonable estimate of the time required to develop the Project and obtain the benefits of the Project. The obligations of the parties must be completed within the times set forth in the Schedule of Performance attached hereto.

1.4. The Project

Developer shall construct the Project in accordance with this Agreement. The Project consists of various Elements, as described below and in other sections herein. A detailed description of the improvements to be constructed by Developer and City pursuant to this Agreement is set forth in the Scope of Development which is attached hereto as Exhibit I and incorporated herein.

1.4.1. Single-Family Element. Developer shall design and construct not less than two hundred (200) and up to two hundred fifteen (215) for-sale single-family homes, with the final number subject to the City's approval of the Project Approvals for the Single Family Element. The Single Family Element shall consist of a mix of single-family townhomes and detached single-family homes in accordance with the Scope of Development and the Project Approvals, as defined in Section 2.1 hereof. The Single-Family Element shall include, but is not limited to, construction of streets, sidewalks, landscaping, lighting and all onsite and offsite utilities, including but not limited to sanitary sewer, storm drain, water, natural gas, electricity and fiber optic internet service to all units, all in conformance with the Scope of Development, City Building and Zoning codes and pursuant to plans to be approved by the City. All single-family homes shall include sustainability measures in accordance with Section 1.4.15 hereof.

The Single-Family Element shall be subject to all of the requirements of the City's Inclusionary Housing Ordinance (San Leandro Zoning Code section 6-3000 *et seq.*), which requires fifteen percent (15%) of the units to be restricted to occupancy by moderate income or low-income households, unless an alternative means of compliance is approved in accordance with Section 6-3016. As an alternate means of compliance, Developer shall provide not less than six percent (6%) of the units as workforce housing, restricted to sale at a price affordable to households earning up to 135% of the Area Median Income, and to provide not less than four percent (4%) of the units as moderate income housing, restricted to sale at a price affordable to households earning up to 120% of the Area Median Income, and to pay an in lieu fee equal to \$10 per square foot of all Single Family Element residential gross floor area (exclusive of garage and off-street parking areas, decks and patios), multiplied by the remaining percentage of the required inclusionary housing units, divided by fifteen (15). For example, if Developer elects to satisfy the Inclusionary Housing Ordinance by performing the minimum required amount of construction of workforce housing and moderate income housing, and constructs exactly six percent (6%) of the units as workforce housing, and constructs exactly four percent (4%) of the units as moderate income housing, the remaining percentage of the required inclusionary housing units would be five percent (5%), and the in lieu fee would be \$10 per square foot of all Single Family Element residential gross floor area (exclusive of garage and off-street parking areas, decks and patios), multiplied by one-third (5 divided by 15)). The method of compliance with the Inclusionary Housing Ordinance is set forth in the Single Family Parcel Purchase and Sale Agreement (as defined below), and shall be described in greater detail in an Inclusionary Housing Plan approved by the City and an Inclusionary Housing Agreement to be executed by Developer and City with respect to the Single Family Element pursuant to Section 6-3014 of the City Zoning Code.

The Single-Family Element shall be located on that portion of the existing nine-hole Marina Golf Course owned by the City and described on Exhibit B, attached hereto and

incorporated herein by this reference (the “**Single Family Parcel**”). The City shall use good faith efforts to enter into an amendment to the Lease between the City and American Golf Corporation, dated November 15, 1997, as amended, as soon as practicable, but no later than April 20, 2020, which would allow the City to terminate the Lease upon notice to American Golf Corporation, and would provide for the City and American Golf Corporation to enter into a mutually acceptable golf course management agreement upon the termination, in order to permit the development of the Single Family Element upon the Single Family Parcel and the construction of the Golf Course Element on the remaining portion of the Golf Course property. The Developer and City shall enter into a purchase and sales agreement for the Single-Family Parcel, which purchase and sale agreement shall be in substantially the form of Exhibit L attached hereto (the “**Single-Family Parcel PSA**”), concurrently with the Effective Date of this Agreement. The Developer shall be responsible for the submission and approval of any necessary tentative and final subdivision and/or parcel maps. The Single-Family Parcel shall be delivered in an “as is” condition. Developer acknowledges and accepts the current condition of any existing or buried utilities that serve the Single Family Parcel with no express or implied warranty by City of their suitability for the Single Family Element; provided, however, that City shall promptly disclose to Developer all information actually known to the City and all documentation available in a reasonably diligent search of City’s files and records with regard to any such existing or buried utilities that serve the Single Family Parcel.

The purchase price for the Single Family Parcel to be paid by Buyer to Seller (the “**Purchase Price**”) is the sum of the following: (a) the number of approved Townhome Lots multiplied by One Hundred Sixteen Thousand Six Hundred Ninety-Seven Dollars (\$116,697), plus (b) the number of approved Detached Lots multiplied by One Hundred Fifty-Seven Thousand Two Hundred Seventy-Six Dollars (\$157,276); provided, however, that the Purchase Price shall not be less than Twenty-Nine Million Three Hundred Forty-Five Thousand and Ninety-Two Dollars (\$29,345,092) unless the total number of approved Lots is less than Two Hundred (200) or the number of approved Detached Lots is less than One Hundred Forty-Eight (148). The number of approved Lots shall be determined pursuant to the Governmental Entitlements (as defined in the Single-Family PSA) in effect as of the date of close of escrow. For purposes of this Agreement, a single condominium lot which will accommodate multiple attached townhomes and detached single family homes will be counted as multiple Lots equal to the number of attached townhomes and detached single family homes which are approved, rather than counted as a single Lot. The full amount of the Purchase Price, less applicable deposit, shall be paid in full prior to the close of escrow for the conveyance of the Single Family Parcel to the Developer.

Developer shall not close escrow for the initial sale of more than one hundred thirty-two (132) new residential units created on the Single-Family Parcel until the Golf Course Element is substantially complete. Substantial completion will be achieved when all major construction is complete and only minor work and/or maturation of landscaping remaining, as determined by the acceptance of the work as substantially complete by the Directors of Engineering and Transportation and Public Works, respectively. The City shall record a lien or covenants on the Property prohibiting sale of more than one hundred thirty-two (132) new residential units until the Golf Course Element is substantially complete, and shall remove the lien or covenant after the Golf Course Element is substantially complete and accepted by the City Council.

Developer hereby agrees to form a homeowner association (“**HOA**”) to own, maintain, repair and manage streets, storm drains (including any Municipal Regional Stormwater Permit compliance features), sanitary sewer systems, utilities, landscaping, common areas and other improvements within the Single-Family Parcel as a common interest development under the Davis-Stirling Common Interest Development Act. The purpose of the HOA will be to enforce the rules and regulations adopted from time to time by its board of directors, enhance and protect the value, desirability, and attractiveness of the community, and discharge such other lawful duties and responsibilities as may be required pursuant to its bylaws and the declaration of covenants, conditions and restrictions (“**CC&Rs**”) to be recorded in the Office of the Recorder of Alameda County. The CC&Rs shall require the construction, protection, preservation and maintenance of the appearance, condition, function and operation of the Single-Family Parcel and the Single-Family Element, including but not limited to all landscaping visible from any public or private road. In addition to other matters, the CC&Rs shall provide for the coordination of the Single Family Element with the operation of the City’s Marina Golf Course, maintenance of borders and access between the Single Family Element and the Marina Golf Course, and communications between the occupants of the Single-Family Element and the operator of the Marina Golf Course. Prior to recordation of the declaration of CC&Rs, Developer agrees to provide City a reasonable opportunity to review and comment on the provisions of the CC&Rs to ensure consistency and compliance with the requirements of this Agreement and any other applicable law. City shall not unreasonably withhold its approval of the CC&Rs.

1.4.2. Golf Course Element. In the event that Developer acquires the Single Family Parcel from City pursuant to the Single Family Parcel PSA, Developer shall redesign and reconstruct, at Developer’s sole expense, a nine-hole links style par 3 golf course located on that portion of the City’s Marina Golf Course not sold by the City to the Developer, as further described in Exhibit C, attached hereto and incorporated herein by this reference (the “**Golf Course Parcel**”). The Parties acknowledge that the City is and shall remain the owner of the Golf Course Parcel after the close of escrow for the Single Family Parcel.

The Golf Course Parcel shall be stripped of existing improvements and landscaping, then graded and improved to create a new golf course. The existing north lake (subject to City-approved reconfiguration), mature trees (where feasible and appropriate as determined by the City Public Works Director), and the monarch butterfly nesting area shall remain. Per Mitigation Measure BIO-1A in the San Leandro Shoreline Development Final EIR, a Monarch Butterfly Roosting Habitat Protection Program (MBRHPP) shall be prepared by a qualified biologist and ensure adequate avoidance and protection of the winter roosting colony, consistent with the intent of Section 4-1-1000, Interference with Monarch Butterflies Prohibited, of the San Leandro Municipal Code. Improvements shall include a new irrigation system, stormwater management and drainage features, landscaping, concrete paths, and a protection fence for the residential neighborhood to the east as well as a new attendant shack and restroom. A golf cart path shall connect the new entrance with the existing crosswalk on Fairway Drive, in a location approved by the City. The existing maintenance yard and building shall remain, subject to any changes by the City as a part of the construction of the new Mulford-Marina Library. The existing water pipe connecting the north lake to the 18 hole golf course to the south of Fairway Drive shall remain. Final golf course design and any changes to existing infrastructure, including water features, are subject to review and approval of the Public Works and Engineering & Transportation Departments.

Developer shall be responsible for and pay for the design of the Golf Course Element. The design work shall be completed by a consultant approved by the City. The final design for the Golf Course Element is subject to review and approval in writing by the City Manager in consultation with the Directors of the Public Works and Engineering & Transportation Departments, respectively. The final design for the Golf Course Element shall be approved by the City in writing, with input from applicable community groups. Developer shall provide an implementation plan that includes (a) a golf course redesign plan that includes input from applicable community groups, (b) a detailed budget and schedule for completion of the Golf Course Element, and (c) evidence of commitments for the proposed funding for the Golf Course Element sufficient to ensure timely completion (the “**Golf Course Implementation Plan**”). Developer and City shall also enter into a Public Improvement Agreement in substantially the form of Exhibit Q attached hereto (the “**Public Improvement Agreement**”) regarding the construction of certain public improvements throughout the Project which shall, among other things, (i) set forth the procedures and requirements for inspection and acceptance of the Golf Course Element by the City, and (ii) contain the acknowledgement of the Parties that, following such acceptance of the Golf Course Element, the City shall have the exclusive obligation to operate and maintain the Golf Course Element. The Public Improvement Agreement shall require that the work performed thereunder is in compliance with the Prevailing Wage Laws, as defined in Section 1.6.1 hereof. The City’s approval of the Golf Course Implementation Plan, the parties’ execution of the Public Improvement Agreement for the Golf Course Element, and Developer’s furnishing of all bonds and/or other security required by the Public Improvement Agreement, Developer’s application for Building Permits, Grading Permits and Demolition Permits, Developer’s entrance into a contract with a qualified general contractor for construction, and Developer’s compliance with any other applicable Seller’s Conditions to Closing, as set forth in Section 5.3 of the Purchase and Sale Agreement, shall be conditions precedent to the close of escrow for City’s sale of the Single Family Parcel to Developer.

1.4.3. Developer Hotel Element. The Developer Hotel Element shall be located on that portion of the Property described in Exhibit D, attached hereto and incorporated herein by this reference (the “**Developer Hotel Parcel**”). Developer shall design and construct on the Developer Hotel Parcel a First Class Hotel (as defined in the Developer Hotel Ground Lease) with between 200 and 220 rooms, publicly accessible outdoor space, parking, lighting, landscaping, ancillary food and beverage amenities and all site utilities, all in conformance with the Scope of Development, City Building and Zoning codes, and pursuant to plans to be approved by the City. The Developer Hotel Element may consist of two distinct hotels which share common facilities such as a lobby. Parking for the Developer Hotel Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code or as otherwise approved by the City. Developer shall also perform demolition, grading, site preparation (including sea level rise mitigation), and install surface improvements for the portions of the publicly accessible Bay Trail path located adjacent to the Developer Hotel Parcel, in accordance with the Scope of Development. City and Developer shall mutually agree upon a budget for such improvements. In accordance with City Municipal Code, Chapter 7-13, a credit against the applicable Park Facilities Development Impact Fee, in an amount equal to the cost of such public facility and in accordance with the approved budget, shall be provided by the City. The Developer Hotel Element shall include an approximately 5,000 square-foot full-service

restaurant, which the Developer may sublease to an independent third-party operator, subject to the requirements of the Developer Hotel Ground Lease.

Subject to the satisfaction (or waiver by the benefitted party or parties) of the Conditions Precedent to Commencement of Developer Hotel Ground Lease set forth below, City shall enter into a ground lease with the Developer, whereby the City shall lease the Developer Hotel Parcel to the Developer, which ground lease shall be substantially in the form of Exhibit M attached hereto (the “**Developer Hotel Ground Lease**”). The Developer Hotel Parcel shall be delivered in an “as is” condition, which includes an existing restaurant building, parking lot, landscaping, a service building, and other ancillary site elements. Developer further acknowledges and accepts the current condition of any existing or buried utilities that serve the Developer Hotel Parcel with no express or implied warranty by City of their suitability for the Developer Hotel Element; provided, however, that City shall promptly disclose to Developer all information actually known to the City and all documentation available in a reasonably diligent search of City’s files and records with regard to any such existing or buried utilities that serve the Developer Hotel Parcel. The Developer anticipates that it will sublease the Developer Hotel Parcel to an affiliate of Developer. Any such sublease shall be made in compliance with Article 7 of this Agreement and Section 13 of the Developer Hotel Ground Lease.

Developer agrees that an easement shall be recorded on the Developer Hotel Parcel allowing the public to use certain designated parking spaces located adjacent to the Park Parcel, with rights of ingress and egress thereto provided to users and customers of the Developer Restaurant Element and the Market Element to utilize parking on the Developer Hotel Parcel, and to provide for joint access between the parcels. The days and hours of public use of such designated parking spaces shall be as determined by the mutual agreement of City and Developer.

The term of the existing lease for the El Torito restaurant occupying the building on the Developer Hotel Parcel is currently on a month-to-month basis (the “**Existing Restaurant Lease**”). The City has the right under the Existing Restaurant Lease to terminate the lease upon at least thirty (30) days’ notice to the tenant. Developer shall give at least sixty (60) days’ notice to City of Developer’s intended date for signing and commencement of the Developer Hotel Ground Lease in order to provide City sufficient time for termination of the Existing Restaurant Lease and relocation of the existing tenant. City shall be responsible for determining and providing any relocation assistance required under applicable law to be provided to the tenant of the Existing Restaurant Lease, if any is so required.

1.4.3.1 Conditions for Benefit of the City. City’s obligation to execute the Developer Hotel Ground Lease is subject to the fulfillment or waiver by City of each and all of the conditions precedent described below (“**City’s Developer Hotel Ground Lease Commencement Conditions Precedent**”), which are solely for the benefit of City, any of which may be waived by the City in its sole and absolute discretion within the time periods provided for herein.

(a) Approval of Developer Hotel Ground Lease Subtenant. If Developer proposes to sublease the Developer Hotel Parcel concurrently with the execution of the Developer Hotel Ground Lease, then the City shall have approved the entity to be designated as the Subtenant under the Developer Hotel Ground Lease, and the form of the proposed

sublease, in accordance with the standards set forth in Article 7 hereof and Section 13 of the Developer Hotel Ground Lease (“**Developer Hotel Ground Lease Subtenant**”), and shall have approved a copy of the organizational documents of the Developer Hotel Ground Lease Subtenant as the City deems necessary to document the power and authority of the Developer Hotel Ground Lease Subtenant to perform its obligations set forth in the Developer Hotel Ground Lease.

(b) City Approval of Hotel Brand and Franchise Agreement. Developer shall have submitted to City the proposed identity of the proposed Hotel Brand and a proposed Franchise Agreement in accordance with the requirements of Section 5.2 of the Developer Hotel Ground Lease, and the City shall have approved the same.

(c) City Approval of Operator. Developer shall have submitted to the City the identity of the proposed Operator of the Developer Hotel, and the City shall have approved the proposed Operator in accordance with the requirements of Section 5.2 of the Developer Hotel Ground Lease.

(d) Evidence of Developer Hotel Element Funding. The City shall have received and reasonably approved the following:

(i) Budget. A detailed budget for the construction and development of the Developer Hotel Element, as submitted by Developer to City.

(ii) Construction Loan. True and complete copies of all construction loan documents evidencing the obligation of a construction lender in conformance with the requirements of Section 7 of the Developer Hotel Ground Lease and reasonably acceptable to the City to make a Construction Loan to the Developer, subject only to reasonable and customary conditions and requirements.

(iii) Equity Funds. Documentary evidence reasonably acceptable to the City that the Developer has obtained a commitment of equity funds for the construction of the Developer Hotel Element, subject only to reasonable and customary conditions and requirements.

(iv) Total Project Cost. The City shall have determined that there are sufficient loan and equity funds available to the Developer for the construction, development and operation of the Developer Hotel Element at a cost consistent with the budget approved by the City.

(e) General Contractor. The general contractor for the Developer Hotel Element (the “**General Contractor**”) shall have been approved by the City.

(f) Construction Contract. The City shall have received a true and complete copy of a signed contract by and between Developer and the General Contractor pursuant to which the General Contractor has agreed to construct the Developer Hotel Element at a cost consistent with the costs set forth therefor in the approved Project Budget (the “**Construction Contract**”).

(g) Prevailing Wage Requirements. The Developer shall notify City in writing of its determination as to the applicability of the Prevailing Wage Laws to the construction of the Developer Hotel Element. If the Developer determines that the Developer Hotel Element is required to be constructed in accordance with the Prevailing Wage Laws, the Construction Contract shall be in compliance with the prevailing wage requirements set forth in the Developer Hotel Ground Lease, and the Developer shall have filed a PWC-100 form with the California Department of Industrial Relations in accordance with the Prevailing Wage Laws.

(h) Project Labor Agreement. The Developer shall have entered into a Project Labor Agreement in the form required in Section 6.1.7 of the Developer Hotel Ground Lease.

(i) Labor Peace Agreement. The Developer shall have submitted to the City an executed Labor Peace Agreement in the form required by Section 5.4 of the Developer Hotel Ground Lease.

(j) Insurance. The Developer shall have submitted to the City and the City shall have approved the Developer's evidence of the liability insurance required pursuant to Section 8 of the Developer Hotel Ground Lease.

(k) Bonds and Security. The Developer shall have submitted to the City payment and performance bonds or alternate security in the form required by Section 6.1.8.1 of the Developer Hotel Ground Lease.

(l) Permits for Horizontal Improvements. Applicable permits for Horizontal Improvements, as defined in the Scope of Development, including grading, encroachment and demolition Permits for the Developer Hotel Element, shall have been issued by the City or shall be ready to be issued subject only to the payment of applicable fees, the posting of required security, or both.

(m) Construction to Commence. The City shall be reasonably satisfied that construction of the Horizontal Improvements for the Developer Hotel Element are ready to commence not later than ninety (90) days after the Effective Date of the Developer Hotel Ground Lease and thereafter shall be pursued to completion in a diligent and continuous manner.

(n) Documents Executed. The Developer shall have duly executed the Developer Hotel Ground Lease and Memorandum of Ground Lease, with signatures acknowledged (as applicable), and shall have deposited them into the Escrow established for the Developer Hotel Ground Lease.

(o) Representations and Warranties. The representations of Developer contained in this Agreement shall be correct in all material respects as of the date of the Developer Hotel Ground Lease Commencement as though made on and as of that date and, if requested by the City, the City shall have received a certificate to that effect signed by Developer.

(p) No Default. No Event of Default of this Agreement by Developer shall then exist, and no event shall then exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Developer and, if requested by City, the City shall have received a certificate to that effect signed by Developer.

1.4.3.2. Conditions for Benefit of Developer. Developer's obligation to execute the Developer Hotel Ground Lease is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below ("Developer Hotel Ground Lease Commencement Conditions Precedent"), which are solely for the benefit of Developer, any of which may be waived by the Developer in its sole and absolute discretion within the time periods provided for herein.

(a) Condition of Property. The Developer Hotel Parcel shall be delivered in an "as is" condition. Developer shall have approved the physical and environmental condition of the Developer Hotel Parcel (subject to any rights Developer may have with respect to the physical and environmental condition of the Developer Hotel Parcel pursuant to the Developer Hotel Ground Lease); provided that Developer acknowledges and accepts the current condition of any existing or buried utilities that serve the property with no express or implied warranty by City of their suitability for the Developer Hotel Element.

(b) Property Vacant. The Developer Hotel Parcel shall be free of any occupants.

(c) Developer Hotel Element Financing. The Developer shall have received commitments for all Developer Hotel Element construction financing in form and substance acceptable to the Developer, and the construction phase Developer Hotel Element financing shall be ready to close concurrently with the Effective Date of the Developer Hotel Ground Lease.

(d) Permits for Horizontal Improvements. Applicable permits for Horizontal Improvements, as defined in the Scope of Development, including grading, encroachment and demolition permits for the Developer Hotel Element, shall have been issued by the City or shall be ready to be issued subject only to the payment of applicable fees, the posting of required security, or both.

(e) Title Insurance. Developer shall have reviewed and approved the condition of title of the Developer Hotel Parcel, and Old Republic Title Company, or another title company mutually designated by the Parties ("**Title Company**"), shall be prepared to issue an ALTA leasehold form policy of title insurance in a policy amount acceptable to Developer showing leasehold title to the Developer Hotel Parcel and fee title to the improvements located thereon vested in the Developer, free and clear of all recorded liens, encumbrances, encroachments, assessments, leases and taxes, except (i) the lien of the construction loan security documents, (ii) the exceptions set forth in a preliminary title report issued by the Title Company (the "**Preliminary Report**") which have been reasonably approved by Developer, and (iii) the standard conditions and exceptions contained in an ALTA standard owner's policy of title insurance that is regularly issued by the Title Company in transactions

similar to the one contemplated by this Agreement (the “**Developer Hotel Title Policy**”). The Title Company shall provide the City with a copy of the Developer Hotel Title Policy.

(f) No Default. No Event of Default of this Agreement by City shall then exist, and no event shall then exist which, with only the giving of notice or the passage of time or both, would constitute an Event of Default by City.

1.4.4. Multifamily Element. The Multifamily Element shall be located on that portion of the Property described in Exhibit E, attached hereto and incorporated herein by this reference (the “**Multifamily Parcel**”). Developer shall design and construct a Multifamily residential development with approximately two hundred eighty-five (285) rental units, including parking, landscaping, lighting and all onsite and offsite utilities, including but not limited to fiber optic internet service to all units, all in conformance with the Scope of Development, City Building and Zoning codes, and pursuant to plans to be approved by the City. Developer shall also perform demolition, rough grading, and provide clean fill as a part of site preparation (including sea level rise mitigation), and install surface improvements for the portions of the publicly accessible Bay Trail path located on the Multifamily Parcel, in accordance with the Scope of Development. City and Developer shall mutually agree upon a budget for such improvements. In accordance with Municipal Code, Chapter 7-13, a credit against the applicable Park Facilities Development Impact Fee, in an amount equal to the cost of such public facility and in accordance with the approved budget, shall be provided by the City. Parking for the Multifamily Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code or as otherwise approved by the City.

The Multifamily Element shall meet the objectives of the City’s Inclusionary Housing Ordinance (San Leandro Zoning Code section 6-3000 *et seq.*) by paying a fee in-lieu of providing affordable rental units (the “**Affordable Rental Housing In-Lieu Fee**”). The Affordable Rental Housing In-Lieu Fee is equal to five dollars (\$5.00) per rentable square foot of the Multifamily residential building provided for herein. If Developer elects not to pay the Affordable Rental Housing In-Lieu Fee, the size and income distribution of the affordable rental units shall be subject to the requirements of the Inclusionary Housing Ordinance. The unit mix of the Multifamily Element and any amenities are subject to the Project Approvals, as defined in Section 2.1 hereof.

The City is the lessor of certain existing leases for boat storage located on the Multifamily Parcel. Such leases are currently on a month-to-month basis (the “**Existing Boat Leases**”). The City has the right under the Existing Boat Leases to terminate such leases upon at least thirty (30) days’ notice to the tenants. Developer shall give at least sixty (60) days’ notice to City of Developer’s intended date for signing and commencement of the Multifamily Ground Lease in order to provide City sufficient time for termination of the Existing Boat Leases and relocation of the existing tenants. City shall be responsible for determining and providing any relocation assistance required under applicable law to be provided to the existing tenants, if any is so required.

Subject to the satisfaction (or waiver by the benefitted party or parties) of the Conditions Precedent to Commencement of Multifamily Ground Lease set forth below, City shall enter into a ground lease with the Developer, whereby the City shall lease the Multifamily Parcel to the

Developer, which ground lease shall be in substantially the form of Exhibit N attached hereto (the “**Multifamily Ground Lease**”). The Developer anticipates that it may want to sublease the Multifamily Parcel to an affiliate of Developer. Any such sublease shall be made in compliance with Article 7 of this Agreement and Section 13 of the Multifamily Ground Lease. The Multifamily Parcel shall be delivered in an “as is” condition. Developer acknowledges and accepts the current condition of any existing or buried utilities that serve the Multifamily Parcel with no express or implied warranty by City of their suitability for the Multifamily Element. There is currently a restroom, boat launch ramp and other improvements located on the Multifamily Parcel, which will remain in place as of the commencement of the Multifamily Ground Lease.

1.4.4.1 Conditions for Benefit of the City. City’s obligation to execute the Multifamily Ground Lease is subject to the fulfillment or waiver by City of each and all of the conditions precedent described below (“**City’s Multifamily Ground Lease Commencement Conditions Precedent**”), which are solely for the benefit of City, any of which may be waived by the City in its sole and absolute discretion within the time periods provided for herein.

(a) Approval of Multifamily Ground Lease Subtenant. If Developer proposes to sublease the Multifamily Ground Lease Parcel concurrently with the execution of the Multifamily Ground Lease, then the City shall have approved the entity to be designated as the Subtenant under the Multifamily Ground Lease, and the form of the proposed sublease, in accordance with the standards set forth in Article 7 hereof and Section 13 of the Multifamily Ground Lease (“**Multifamily Ground Lease Subtenant**”), and shall have approved a copy of the organizational documents of the Multifamily Ground Lease Subtenant as the City deems necessary to document the power and authority of the Multifamily Ground Lease Subtenant to perform its obligations set forth in the Multifamily Ground Lease.

(b) Evidence of Multifamily Element Financing. The City shall have received and reasonably approved the following:

(i) Budget. A detailed budget for the construction and development of the Multifamily Element, as submitted by Developer to City.

(ii) Construction Loan. True and complete copies of all construction loan documents evidencing the obligation of a construction lender in conformance with the requirements of Section 7 of the Multifamily Ground Lease and reasonably acceptable to the City to make a Construction Loan to the Developer, subject only to reasonable and customary conditions and requirements.

(iii) Equity Funds. Documentary evidence reasonably acceptable to the City that the Developer has obtained a commitment of equity funds for the construction of the Multifamily Element, subject only to reasonable and customary conditions and requirements.

(iv) Total Project Cost. The City shall have determined that there are sufficient loan and equity funds available to the Developer for the construction,

development and operation of the Multifamily Element at a cost consistent with the budget approved by the City.

(c) General Contractor. The general contractor for the Multifamily Element (the “**General Contractor**”) shall have been reasonably approved by the City.

(d) Construction Contract. The City shall have received a true and complete copy of a signed contract by and between Developer and the General Contractor pursuant to which the General Contractor has agreed to construct the Multifamily Element at a cost consistent with the costs set forth therefor in the approved Project Budget (the “Construction Contract”)

(e) Prevailing Wage Requirements. The Developer shall notify City in writing of its determination as to the applicability of the Prevailing Wage Laws to the construction of the Multifamily Element. If the Developer determines that the Multifamily Element is required to be constructed in accordance with the Prevailing Wage Laws, the Construction Contract shall be in compliance with the Prevailing Wage Laws, and the Developer shall have filed a PWC-100 form with the California Department of Industrial Relations in accordance with the Prevailing Wage Laws.

(f) Project Labor Agreement. The Developer shall have entered into a Project Labor Agreement in the form required in Section 6.1.7 of the Multifamily Ground Lease.

(g) Insurance. The Developer shall have submitted to the City and the City shall have approved the evidence of the liability insurance required pursuant to Section 8 of the Multifamily Ground Lease.

(h) Bonds and Security. The Developer shall have submitted to the City payment and performance bonds or alternate security in the form required by Section 6.1.8.1 of the Multifamily Ground Lease.

(i) Permits for Horizontal Improvements. Applicable permits for Horizontal Improvements, as defined in the Scope of Development, including grading, encroachment and demolition permits for the Multifamily Element, shall have been issued by the City or shall be ready to be issued subject only to the payment of applicable fees, the posting of required security, or both.

(j) Construction to Commence. The City shall be reasonably satisfied that construction of the Horizontal Improvements for the Multifamily Element are ready to commence not later than ninety (90) days after the Effective Date of the Multifamily Ground Lease and thereafter shall be pursued to completion in a diligent and continuous manner.

(k) Documents Executed. The Developer shall have duly executed the Multifamily Ground Lease and Memorandum of Ground Lease, with signatures acknowledged (as applicable), and shall have deposited them into the Escrow established for the Multifamily Ground Lease.

(l) Representations and Warranties. The representations of Developer contained in this Agreement shall be correct in all material respects as of the date of the Multifamily Ground Lease Commencement as though made on and as of that date and, if requested by the City, the City shall have received a certificate to that effect signed by Developer.

(m) No Default. No Event of Default of this Agreement by Developer shall then exist, and no event shall then exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Developer and, if requested by City, the City shall have received a certificate to that effect signed by Developer.

1.4.4.2. Conditions for Benefit of Developer. Developer's obligation to execute the Multifamily Ground Lease is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below ("**Developer's Multifamily Ground Lease Commencement Conditions Precedent**"), which are solely for the benefit of Developer, any of which may be waived by the Developer in its sole and absolute discretion within the time periods provided for herein.

(a) Condition of Property. The Multifamily Parcel shall be delivered in an "as is" condition. Developer shall have approved the physical and environmental condition of the Multifamily Parcel (subject to any rights Developer may have with respect to the physical and environmental condition of the Multifamily Parcel pursuant to the Multifamily Ground Lease); provided that Developer acknowledges and accepts the current condition of any existing or buried utilities that serve the property with no express or implied warranty by City of their suitability for the Multifamily Element. There is currently an existing restaurant building, storage building and other improvements located on the Developer Hotel Parcel, with leases on a month-to-month basis, which will remain in place as of the commencement of the Developer Hotel Ground Lease.

(b) Property Vacant. The Multifamily Parcel shall be free of any occupants.

(c) Multifamily Element Financing. The Developer shall have received commitments for all Multifamily Element financing and equity funds in form and substance acceptable to the Developer, and the construction phase Multifamily Element financing shall be ready to close concurrently with the Effective Date of the Multifamily Ground Lease.

(d) Permits for Horizontal Improvements. Applicable permits for Horizontal Improvements, as defined in the Scope of Development, including -grading, encroachment and demolition permits for the Multifamily Element, shall have been issued by the City or shall be ready to be issued subject only to the payment of applicable fees, the posting of required security, or both.

(e) Title Insurance. Developer shall have reviewed and approved the condition of title of the Multifamily Parcel, and the Title Company shall be prepared to issue an ALTA leasehold form policy of title insurance in a policy amount

acceptable to Developer showing leasehold title to the Multifamily Parcel and fee title to the improvements located thereon vested in the Developer, free and clear of all recorded liens, encumbrances, encroachments, assessments, leases and taxes except (i) the lien of the construction loan security documents, (ii) the exceptions set forth in a preliminary title report issued by the Title Company (the “**Preliminary Report**”) which have been reasonably approved by Developer, and (iii) the standard conditions and exceptions contained in an ALTA standard owner’s policy of title insurance that is regularly issued by the Title Company in transactions similar to the one contemplated by this Agreement (the “Multifamily Title Policy”). The Title Company shall provide the City with a copy of Multifamily Title Policy.

(f) No Default. No Event of Default of this Agreement by City shall then exist, and no event shall then exist which, with only the giving of notice or the passage of time or both, would constitute an Event of Default by City.

1.4.5. Developer Restaurant Element. Developer shall design and construct (or cause to be designed and constructed) a two-story building shell in which an approximately 7,500 square foot full-service restaurant shall be located on the first floor and an approximately 7,500 square foot banquet facility shall be located on the second floor, in accordance with the Scope of Development. Developer shall provide for the Developer Restaurant Ground Lease Subtenant or the operator of the Restaurant to construct the tenant improvements for the Restaurant, or Developer shall construct the tenant improvements itself. The Developer Restaurant Element shall include parking, lighting, landscaping and all site utilities, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City. Parking for the Developer Restaurant Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code, or as otherwise approved by the City. The Developer Restaurant Element shall be located on that portion of the Property described in Exhibit E, attached hereto and incorporated herein by this reference (the “**Developer Restaurant Parcel**”).

Subject to the satisfaction (or waiver by the benefitted party or parties) of the Conditions Precedent to Commencement of Developer Restaurant Ground Lease set forth below, City shall enter into a ground lease with the Developer, whereby the City shall lease the Developer Restaurant Parcel to the Developer, which ground lease shall be in substantially the form of Exhibit O attached hereto (the “**Developer Restaurant Ground Lease**”). The Developer anticipates that it may sublease the Developer Restaurant Parcel to an affiliate of Developer. Any such sublease shall be made in compliance with Article 7 of this Agreement and Section 13 of the Developer Restaurant Ground Lease. The Developer Restaurant Parcel shall be delivered in an “as is” condition. Developer acknowledges and accepts the current condition of any existing or buried utilities that serve the Developer Restaurant Parcel with no express or implied warranty by City of their suitability for the Developer Restaurant Element; provided, however, that City shall promptly disclose to Developer all information actually known to the City and all documentation available in a reasonably diligent search of City’s files and records with regard to any such existing or buried utilities that serve the Developer Restaurant Parcel.

1.4.5.1 Conditions for Benefit of the City. City’s obligation to execute the Developer Restaurant Ground Lease is subject to the fulfillment or waiver by City of each and all of the conditions precedent described below (“**City’s Developer Restaurant Ground Lease**”).

Commencement Conditions Precedent”), which are solely for the benefit of City, any of which may be waived by the City in its sole and absolute discretion within the time periods provided for herein.

(a) Approval of Developer Restaurant Ground Lease Subtenant. If Developer proposes to sublease the Developer Restaurant Parcel concurrently with the execution of the Developer Restaurant Ground Lease, then the City shall have approved the entity to be designated as the Subtenant under the Developer Restaurant Ground Lease in accordance with the standards set forth in Section 7 hereof and Section 13 of the Developer Restaurant Ground Lease (“**Developer Restaurant Ground Lease Subtenant**”), and shall have approved a copy of the organizational documents of the Developer Restaurant Ground Lease Subtenant as the City deems necessary to document the power and authority of the Developer Restaurant Ground Lease Subtenant to perform its obligations set forth in the Developer Restaurant Ground Lease.

(b) City Approval of Developer Restaurant. Developer shall have submitted to the City the identity of the proposed Developer Restaurant, and the City shall have approved the proposed Developer Restaurant in accordance with the requirements of Section 5.2 of the Developer Restaurant Ground Lease.

(c) Evidence of Developer Restaurant Element Financing. The City shall have received and reasonably approved the following:

(i) Budget. A detailed budget for the construction and development of the Developer Restaurant, as submitted by Developer to City.

(ii) Construction Loan. True and complete copies of all construction loan documents evidencing the obligation of a construction lender in conformance with the requirements of Section 7 of the Developer Restaurant Ground Lease and reasonably acceptable to the City to make a Construction Loan to the Developer, subject only to reasonable and customary conditions and requirements.

(iii) Equity Funds. Documentary evidence reasonably acceptable to the City that the Developer has obtained a commitment of equity funds for the construction of the Developer Restaurant, subject only to reasonable and customary conditions and requirements.

(iv) Total Project Cost. The City shall have determined that there are sufficient loan and equity funds available to the Developer for the construction and development of the Developer Restaurant at a cost consistent with the budget approved by the City.

(d) General Contractor. The general contractor for the Developer Restaurant (the “**General Contractor**”) shall have been approved by the City.

(e) Construction Contract. The City shall have received a true and complete copy of a signed contract by and between Developer and the General Contractor pursuant to which the General Contractor has agreed to construct the Developer Restaurant at a

cost consistent with the costs set forth therefor in the approved Project Budget (the “Construction Contract”).

(f) Prevailing Wage Requirements. The Developer shall notify City in writing of its determination as to the applicability of the Prevailing Wage Laws to the construction of the Developer Restaurant Element. If the Developer determines that the Developer Restaurant Element is required to be constructed in accordance with the Prevailing Wage Laws, the Construction Contract shall be in compliance with the Prevailing Wage Laws, and the Developer shall have filed a PWC-100 form with the California Department of Industrial Relations in accordance with the Prevailing Wage Laws.

(g) Project Labor Agreement. The Developer shall have entered into a Project Labor Agreement in the form required in Section 6.1.7 of the Developer Restaurant Ground Lease.

(h) Insurance. The Developer shall have submitted to the City and the City shall have approved evidence of the insurance policies required pursuant to Section 8 of the Developer Restaurant Ground Lease.

(i) Bonds and Security. The Developer shall have submitted to the City payment and performance bonds or alternate security in the form required by Section 6.1.8.1 of the Developer Restaurant Ground Lease.

(j) Permits for Horizontal Improvements. Applicable permits for Horizontal Improvements, as defined in the Scope of Development, including grading, encroachment and demolition permits for the Developer Restaurant Element, shall have been issued by the City or shall be ready to be issued subject only to the payment of applicable fees, the posting of required security, or both.

(l) Construction to Commence. The City shall be reasonably satisfied that construction of the Horizontal Improvements for the Developer Restaurant is ready to commence not later than ninety (90) days after the Effective Date of the Developer Restaurant Ground Lease and thereafter shall be pursued to completion in a diligent and continuous manner.

(m) Documents Executed. The Developer shall have duly executed the Developer Restaurant Ground Lease and Memorandum of Ground Lease, with signatures acknowledged (as applicable), and shall have deposited them into the Escrow established for the Developer Restaurant Ground Lease.

(n) Representations and Warranties. The representations of Developer contained in this Agreement shall be correct in all material respects as of the date of the Developer Restaurant Ground Lease Commencement as though made on and as of that date and, if requested by the City, the City shall have received a certificate to that effect signed by Developer.

(o) No Default. No Event of Default of this Agreement by Developer shall then exist, and no event shall then exist which, with the giving of notice or the passage of

time or both, would constitute an Event of Default by Developer and, if requested by City, the City shall have received a certificate to that effect signed by Developer.

1.4.5.2. Conditions for Benefit of Developer. Developer's obligation to execute the Developer Restaurant Ground Lease is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below ("**Developer's Restaurant Ground Lease Commencement Conditions Precedent**"), which are solely for the benefit of Developer, any of which may be waived by the Developer in its sole and absolute discretion within the time periods provided for herein.

(a) Condition of Property. Developer shall have approved the physical and environmental condition of the Developer Restaurant Property (subject to any rights Developer may have with respect to the physical and environmental condition of the Developer Restaurant Parcel pursuant to the Developer Restaurant Ground Lease); provided that Developer acknowledges and accepts the current condition of any existing or buried utilities that serve the property with no express or implied warranty by City of their suitability for the Restaurant Element.

(b) Property Vacant. The Developer Restaurant Parcel shall be free of any occupants.

(c) Developer Restaurant Element Funding. The Developer shall have received commitments for all Developer Restaurant construction financing and equity funding in form and substance acceptable to the Developer, and the construction phase Developer Restaurant financing and equity funding shall be ready to close concurrently with the Effective Date of the Developer Restaurant Ground Lease.

(d) Permits for Horizontal Improvements. Applicable permits for Horizontal Improvements, as defined in the Scope of Development, including grading, encroachment and demolition permits for the Developer Restaurant Element, shall have been issued by the City or shall be ready to be issued subject only to the payment of applicable fees, the posting of required security, or both.

(e) Title Insurance. Developer shall have reviewed and approved the condition of title of the Developer Restaurant Parcel, and the Title Company shall be prepared to issue an ALTA leasehold form policy of title insurance in a policy amount acceptable to Developer showing leasehold title to the Developer Restaurant Parcel and fee title to the improvements located thereon vested in the Developer, free and clear of all recorded liens, encumbrances, encroachments, assessments, leases and taxes except (i) the lien of the construction loan security documents, (ii) the exceptions set forth in a preliminary title report issued by the Title Company (the "**Preliminary Report**") which have been reasonably approved by Developer, and (iii) the standard conditions and exceptions contained in an ALTA standard owner's policy of title insurance that is regularly issued by the Title Company in transactions similar to the one contemplated by this Agreement (the "**Developer Restaurant Title Policy**"). The Title Company shall provide the City with a copy of the Developer Restaurant Title Policy.

(f) No Default. No Event of Default of this Agreement by City shall then exist, and no event shall then exist which, with only the giving of notice or the passage of time or both, would constitute an Event of Default by City.

1.4.6. Market Element. Developer shall construct an approximately 3,000 square foot single-story free-standing building shell, in accordance with the Scope of Development (the “**Market**”). A food market, bait shop, and/or other retail or service business shall be located in the Market, with the specific use to be approved by the City in its reasonable discretion. Unless the City agrees to another location, the Market building shall share parking with the Developer Hotel Element and be located at the southeast corner of the Developer Hotel Element parking lot at Monarch Bay Drive and Mulford Point Drive. The Market Element shall include lighting, landscaping and all site utilities, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City. The Market Element shall be located on that portion of the Property described in Exhibit G, attached hereto and incorporated herein by this reference (the “**Market Parcel**”).

Subject to the satisfaction (or waiver by the benefitted party or parties) of the Conditions Precedent to Commencement of Market Ground Lease set forth below, City shall enter into a ground lease with the Developer, whereby the City shall lease the Market Parcel to the Developer, which ground lease shall be in substantially the form of Exhibit P attached hereto (the “**Market Ground Lease**”). The Developer anticipates that it may sublease the Market Parcel to an affiliate of Developer. Any such sublease shall be made in compliance with Article 7 hereof and Section 13 of the Market Ground Lease; provided that if the proposed use of such parcel is not for a market but is for some other use, the terms of the Market Ground Lease, including rental rates, shall be subject to market assessment and alteration by mutual agreement of the Parties. The Market Parcel shall be delivered in an “as is” condition. Developer acknowledges and accepts the current condition of any existing or buried utilities that serve the Market Parcel with no express or implied warranty by City of their suitability for the Market Element; provided, however, that City shall promptly disclose to Developer all information actually known to the City and all documentation available in a reasonably diligent search of City’s files and records with regard to any such existing or buried utilities that serve the Market Parcel.

1.4.6.1 Conditions for Benefit of the City. City’s obligation to execute the Market Ground Lease is subject to the fulfillment or waiver by City of each and all of the conditions precedent described below (“**City’s Market Ground Lease Commencement Conditions Precedent**”), which are solely for the benefit of City, any of which may be waived by the City in its sole and absolute discretion within the time periods provided for herein.

(a) Approval of Market Ground Lease Subtenant. If Developer proposes to sublease the Market Parcel concurrently with the execution of the Market Ground Lease, then the City shall have approved the entity to be designated as the Subtenant under the Market Ground Lease in accordance with the standards set forth in Section 7 of this Agreement and Section 13 of the Market Ground Lease (“**Market Ground Lease Subtenant**”), and shall have approved a copy of the organizational documents of the Market Ground Lease Subtenant as the City deems necessary to document the power and authority of the Market Ground Lease Subtenant to perform its obligations set forth in the Market Ground Lease.

(b) Evidence of Market Element Financing. The City shall have received and reasonably approved the following:

(i) Budget. A detailed budget for the construction and development of the Market, as submitted by Developer to City.

(ii) Total Project Cost. The City shall have determined that there are sufficient funds available to the Developer for the construction and development of the Market shell, and sufficient funds available for the construction and development of the Market tenant improvements, at a cost consistent with the budget approved by the City.

(d) General Contractor. The general contractor for the Market (the “**General Contractor**”) shall have been approved by the City.

(e) Construction Contract. The City shall have received a true and complete copy of a signed contract by and between Developer and the General Contractor pursuant to which the General Contractor has agreed to construct the Market shell at a cost consistent with the costs set forth therefor in the approved Project Budget (the “**Construction Contract**”).

(f) Prevailing Wage Requirements. The Developer shall notify City in writing of its determination as to the applicability of the Prevailing Wage Laws to the construction of the Market Element. If the Developer determines that the Market Element is required to be constructed in accordance with the Prevailing Wage Laws, the Construction Contract shall be in compliance with the Prevailing Wage Laws, and the Developer shall have filed a PWC-100 form with the California Department of Industrial Relations in accordance with the Prevailing Wage Laws.

(g) Project Labor Agreement. The Developer shall have entered into a Project Labor Agreement in the form required in Section 6.1.7 of the Market Ground Lease.

(h) Insurance. The Developer shall have submitted to the City the evidence of the liability insurance required pursuant to Section 8 of the Market Ground Lease.

(i) Bonds and Security. The Developer shall have submitted to the City payment and performance bonds or alternate security in the form required by Section 6.1.8.1 of the Market Ground Lease.

(j) Permits for Horizontal Improvements. Applicable permits for Horizontal Improvements, as defined in the Scope of Development, including grading, encroachment and demolition permits for the Market Element, shall have been issued by the City or shall be ready to be issued subject only to the payment of applicable fees, the posting of required security, or both. In addition, construction drawings for Vertical Improvements shall

have been submitted for Building Permit review, accepted as complete and shall be in plan check.

(l) Construction to Commence. The City shall be reasonably satisfied that construction of the Market shell is ready to commence not later than sixty (60) days after the Effective Date of the Market Ground Lease and thereafter shall be pursued to completion in a diligent and continuous manner.

(m) Documents Executed. The Developer shall have duly executed the Market Ground Lease and Memorandum of Ground Lease, with signatures acknowledged (as applicable), and shall have deposited them into the Escrow established for the Market Ground Lease.

(n) Representations and Warranties. The representations of Developer contained in this Agreement shall be correct in all material respects as of the date of the Market Ground Lease Commencement as though made on and as of that date and, if requested by the City, the City shall have received a certificate to that effect signed by Developer.

(o) No Default. No Event of Default of this Agreement by Developer shall then exist, and no event shall then exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default by Developer and, if requested by City, the City shall have received a certificate to that effect signed by Developer.

1.4.6.2. Conditions for Benefit of Developer. Developer's obligation to execute the Market Ground Lease is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below ("**Developer's Market Ground Lease Commencement Conditions Precedent**"), which are solely for the benefit of Developer, any of which may be waived by the Developer in its sole and absolute discretion within the time periods provided for herein.

(a) Condition of Property. The Market Parcel shall be delivered in an "as is" condition. Developer shall have approved the physical and environmental condition of the Market Parcel (subject to any rights Developer may have with respect to the physical and environmental condition of the Market Parcel pursuant to the Market Ground Lease); provided that Developer acknowledges and accepts the current condition of any existing or buried utilities that serve the property with no express or implied warranty by City of their suitability for the Market Element.

(b) Property Vacant. The Market Parcel shall be free of any occupants.

(c) Permits for Horizontal Improvements. Applicable permits for Horizontal Improvements, as defined in the Scope of Development, including grading, encroachment and demolition permits for the Market Element, shall have been issued by the City or shall be ready to be issued subject only to the payment of applicable fees, the posting of required security, or both.

(d) Title Insurance. Developer shall have reviewed and approved the condition of title of the Market Parcel, and Title Company shall be prepared to issue an ALTA leasehold form policy of title insurance in a policy amount acceptable to Developer showing leasehold title to the Market Parcel vested in the Developer, free and clear of all recorded liens, encumbrances, encroachments, assessments, leases and taxes except (i) the lien of the construction loan security documents, (ii) the exceptions set forth in a preliminary title report issued by the Title Company (the “**Preliminary Report**”) which have been reasonably approved by Developer, and (iii) the standard conditions and exceptions contained in an ALTA standard owner’s policy of title insurance that is regularly issued by the Title Company in transactions similar to the one contemplated by this Agreement (the “**Market Title Policy**”). The Title Company shall provide the City with a copy of the Market Title Policy.

(e) No Default. No Event of Default of this Agreement by City shall then exist, and no event shall then exist which, with only the giving of notice or the passage of time or both, would constitute an Event of Default by City.

1.4.8. Park Element. A new park and public recreational area, Monarch Bay Park, is to be located on the peninsula portion of the Property as well as along the publicly-accessible areas abutting both the shoreline adjacent to the Developer Hotel Parcel and the exterior of the Multifamily Parcel, as described in Exhibit H, attached hereto and incorporated herein by this reference (the “**Park Parcel**”). City shall be responsible for the design and construction of surface improvements for the Park Element. The City’s obligation to cause the design and construction of the Park Element is expressly made contingent upon the close of escrow for the Single Family Parcel. The Park Element shall consist of pedestrian paths, plazas, landscaping, irrigation, restrooms, boat launch, sitting areas, parking, public art and sections of the San Francisco Bay Trail, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City. The trail design shall conform to the San Francisco Bay Trail Design Guidelines and Toolkit, dated June 2016, as it may be amended.

The City intends to obtain some or all of the funding for the Park Element design and construction from the proceeds of the sale of the Single Family Parcel to Developer, and the Park Facilities Impact Fee payable by Developer to City in connection with the Single Family Element. The City may also use all or a portion of the deposit made by Developer pursuant to the Single Family PSA for the costs of the design of the Park, subject to the terms and conditions set forth in the Single Family PSA. Such design work shall be completed by an architect and/or consultant selected by the City in its sole discretion, and may be performed as part of a design-build contract as determined by the City in its sole discretion. The final design for the Park Element shall be approved by the City in its sole discretion and approved by the San Francisco Bay Conservation and Development Commission (“**BCDC**”).

If this Agreement is terminated for any reason other than a material default or default hereunder by City, City may, in its sole and absolute discretion, request that Developer assign and transfer Developer’s rights to any or all Park Element plans that have previously been prepared, provided that the City shall pay to Developer, as consideration for such plans, Developer’s out of pocket cost for such plans. Upon such request, the Developer shall deliver to the City copies of all plans requested by the City together with a bill of sale therefor, provided

that Developer makes no representations, warranties or guarantees regarding the completeness or accuracy of the plans, and Developer does not covenant to convey the copyright or other ownership rights of third parties thereto. Such plans shall thereupon be free of all claims or interests of Developer or any liens or encumbrances. Upon City acquiring Developer's rights to any and all of the Park Element plans, City shall be permitted to grant, license, or otherwise dispose of said plans to any person or entity for development of the Park Element or any other purpose, provided, however, that Developer shall have no liability whatsoever to City or any transferee or title to the plans in connection with the use of the plans.

1.4.9. Harbor Element. The City shall be responsible for performing demolition within the San Leandro Marina Harbor (“**Harbor**”) adjacent to the Property in order to make a clean, aesthetically appropriate and environmentally sound environment, at City's expense. The City's obligation to cause the demolition within the Harbor is expressly made contingent upon the close of escrow for the Single Family Parcel. The demolition within the Harbor shall be in conformance with the Scope of Development. The final plan for the Harbor demolition shall be approved by the City in its sole discretion and approved by BCDC. Subject to compliance with the Scope of Development, public trust requirements and all applicable laws, City has sole discretion of the extent of the demolition within the Harbor. Notwithstanding the foregoing, Developer shall, at its sole cost and expense, relocate the Wes McClure public boat launch located on the outside of the Harbor from its current location to Pescador Point, as described in the Scope of Development.

1.4.10. Monarch Bay Drive Element. The Developer shall be responsible for design, expansion, and reconstruction of Monarch Bay Drive, including but not limited to, construction of a two lane road with appropriate left turn lanes, a class I bicycle facility, parking, sidewalks, new curb-to-curb pavement, striping, new signage, landscaping, irrigation, new and/or modified utilities, undergrounding of utilities (excepting the existing steel pole utilities that north from the Horatio's driveway), lighting, pedestrian, and transit amenities, and construction of a traffic circle at Monarch Bay Drive and Mulford Point Drive. A credit against the applicable Development Fee for Street Improvements, in an amount equal to the cost of any required improvements to the western half of Monarch Bay Drive that directly abuts the existing Horatio's Restaurant (Parcel G) and Marina Inn Hotel (Parcel H), shall be provided by the City.

1.4.11. Infrastructure Element. The Developer shall be responsible for site preparation required for the development of its Project Elements: Single Family Element, Golf Course Element, Developer Hotel Element, Multifamily Element, Developer Restaurant Element, and Market Element. Such site preparation shall include Demolition of existing paving, buildings, and other improvements, tree removal, flood plain and sea level rise mitigation, geotechnical mitigation, and rough grading in accordance with the Scope of Development and Exhibit R. The Developer is responsible for design and reconstruction of the portions of Mulford Point and Pescador Point Drives, which are located south of the Developer Hotel Element (Parcel J) and Multifamily Element (Parcel I), in accordance with the Scope of Development and Exhibit R. Such improvements shall include, but are not limited to sidewalks, new curb-to-curb pavement, striping, new signage, landscaping, irrigation, new and/or modified utilities, undergrounding of overhead utilities, lighting, and pedestrian amenities, subject to final review and approval by the City Engineering and Transportation Director. The Developer is responsible for design and reconstruction of portions of Mulford Point Drive located to the west of the

Developer Hotel Element (Parcel J) and the shared Park Element parking lot located to the west of the Developer Hotel Element (Parcel J) and the Developer Restaurant Element (Parcel K), in accordance with the Scope of Development and Exhibit R. Such roadway improvements shall include, but are not limited to, sidewalks, new pavement, striping, new signage, landscaping, irrigation, new and/or modified utilities, undergrounding of overhead utilities, lighting, and pedestrian amenities, subject to final review and approval by the City Engineering and Transportation Director. A credit against the applicable Park Facilities Development Impact Fee, in an amount equal to half (50%) of the cost of any required improvements to portions of Mulford Point Road and the shared Park Element parking lot, located west of Parcels J and K, shall be provided by the City.

1.4.12. Construction Phasing. Developer's construction of the Project and City's design and construction of the Park Element and Harbor Element shall be performed in compliance with the Schedule of Performance, attached hereto as Exhibit J and incorporated herein by reference. Except as otherwise provided in the Schedule of Performance, construction of the Project shall occur in a continuous rolling phase. The Single-Family Element housing may be developed in multiple phases subject to market conditions, subject to the requirements of the Schedule of Performance.

1.4.13. Public Art. Developer shall finance and place public art at appropriate locations on the Property.

a. The amount to be used to fund the public art shall be calculated as one percent (1%) of the permit valuation for the Project (the "**Public Art Fund**").

b. Eligible expenses for the Public Art Fund include: art and artist selection process, site preparation, design, acquisition and/or construction of the art works.

c. City is responsible for maintenance of all public art located on the Property. City may provide for the costs thereof to be payable by a community facilities district or another entity designated by the City. The location of the Public Art on the Property shall be mutually agreed to by the City and Developer.

d. In lieu of funding on-site public art, Developer may fulfill all or a portion of its requirements under this Section by making a payment calculated as one percent (1%) of the total construction budget to the City, to be deposited into a public art fund managed by the City, which shall be used exclusively for eligible expenses for art on the Property consistent with the expenses set forth in paragraphs (b) and (c) above.

1.4.14. Landscaping. For all Elements of the Project which the Developer leases or owns, including the Single Family Element, Developer Hotel Element, Multifamily Element, Developer Restaurant Element, and Market Element, Developer shall construct and maintain landscaping in conformity with Article 19, Landscape Requirements, of the San Leandro Zoning Code. City has the right to review and approve the landscaping plan prior to construction.

1.4.15. Maintenance of Park Element. The Developer shall have no responsibility to maintain landscaping in the Park Element.

1.4.16. Sustainability. Developer shall perform all of the mitigation measures adopted by the City with respect to the impacts of the project, including those related to greenhouse gas emissions and traffic, as set forth in the mitigation measures in the San Leandro Shoreline Development Final Environmental Impact Report (FEIR), the Mitigation Monitoring and Reporting Program adopted by the City, and any amendments thereto and subsequent requirements of the California Environmental Quality Act. Per Mitigation Measure GHG-1, such measures shall include, but not be limited to, installation of electric vehicle charging stations, installation of Energy Star Rated appliances, establishment of an employee trip commute reduction program for employers with over 50 full-time onsite employees [*to be discussed*], achievement of either Build-it-Green Greenpoint Rated or US Green Building Council's Leadership in Energy and Environmental Design (LEED) standards, and design of structures to be 15 percent more energy efficient than the current Building and Energy Standards (Title 24, Part 6, of the California Building Code). Such increased efficiency may be related to window efficacy, low energy lighting, lighting occupancy sensors, wall, floor and attic insulation, efficient heating and cooling systems, water heater requirements, VOC Emissions reduced for use of construction material, and water conservation for landscaping and building use. Per Mitigation Measure TRAF-2A, such measures may also include development and implementation of a Transportation Demand Management (TDM) plan that would discourage single occupant vehicle trips.

Developer shall construct the Project in accordance with the current California Building Standards Code (CBC) in place at the time of applicable permit submittal, subject to local amendments. Such code shall be, at a minimum, the 2019 California Building Standards Code, which includes increased sustainability requirements beyond the 2016 CBC, such as the requirement for the installation of solar photovoltaic systems on single-family homes. Additionally, CBC requirements related to sustainable construction and demolition shall apply, including the requirement that at least 65 percent of the construction waste materials generated during the project be diverted from the landfill.

In addition to the required mitigation measures and Building Code requirements, Developer shall obtain a Leadership in Energy and Environmental Design (LEED) Certified rating for Building Design and Construction from the U.S. Green Building Council (USGBC) for the Developer Hotel and Multifamily Elements. Outdoor landscaping on the Single Family Element shall also utilize tertiary treated recycled water (grey water) from the San Leandro Water Pollution Control Plant, subject to availability and final City approval.

1.4.17. Property Level. Developer's project elements must meet City engineering requirements related to flood plain and sea level rise, with final site engineering plans subject to approval of the Engineering and Transportation Director. Such plans shall include provisions related to surcharge and raising the Property in accordance with technical recommendations and approved plans. Developer shall deposit available soil on the Park Parcel in accordance with City plans. Developer shall not be obligated to import additional soil. Developer's deposit of soil shall be in accordance with the requirements of Section 2.7 hereof and the Scope of Development, including the parties' execution of a right of entry agreement which protects City from defects in the condition of the deposited soil and provides for the testing of soil to confirm that there are no contaminants or similar unsuitable constituents and the stabilization of the soil deposited on the Park Parcel. Subject to City approval, Developer may import soil onto the

Property prior to property conveyance or ground lease commencement subject to City's Grading Ordinance.

1.5. Community Facilities District. Developer and City shall cooperate in the formation of a community facilities district or districts by the City pursuant to the Mello Roos Community Facilities District Act of 1982 (Gov. Code §§ 53311–53368.3) (the “**Mello-Roos Act**”). Special taxes derived from the District may be used to pay for public area maintenance, public area utilities, reserves and capital expenditures for public infrastructure, and administration of the District. Public area maintenance may include maintenance of public streets, parking lots, park, trail, boat launch, building(s), the harbor basin, and the pedestrian bridge. Such maintenance may be related to hardscape, landscape, and irrigation; lighting; site amenities (picnic tables, bbqs, public art, etc.); stormwater facilities; rodent and pest control; aeration fountains; and riprap. Reserves and capital expenditures may be utilized to make improvements and adaptation for sea level rise, including installation of additional rip rap or a seawall, as well as capital improvements to public areas, such as road replacement, infrastructure upgrades, and amenity replacement. The final scope of the Community Facilities District shall be subject to the Local Goals and Policies and Rate and Method of Apportionment Boundary Map, as adopted by the applicable landowners. The Rate and Method of Apportionment Map shall detail, among other things, how the special tax is levied, maximum special tax rates, and method of apportionment.

1.6. Labor Agreements.

1.6.1 Contractors. Prior to the date of this Agreement, Developer has entered into a Letter of Intent (“LOI”) with the Building Trades Council of Alameda County regarding the Project. For each Element of the Project that is Developer’s responsibility, and prior to the conveyance of such Element to Developer through the applicable Ground Lease or Purchase and Sale Agreement, Developer or its General Contractor shall enter into a project labor agreement in accordance with the LOI, and such labor agreement must be adhered to by any general contractor retained by the Developer. For purposes hereof, a project labor agreement means a pre-hire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code and California Public Contracts Code Section 2500, or successor statutes.

If and to the extent required by federal and state prevailing wage laws, rules and regulations, Developer and its contractors and agents shall pay prevailing wages for all construction, alteration, demolition, installation, and repair work performed for the Project, in compliance with California Labor Code Section 1720 *et seq.* and applicable federal labor laws and standards, and the regulations adopted pursuant thereto (“**Prevailing Wage Laws**”), and shall be responsible for carrying out the requirements of such provisions; provided that the Parties have determined that the Prevailing Wage Laws are applicable to the work to be performed for the Golf Course Element. If the Prevailing Wage Laws are applicable to an Element, Developer shall submit to City a plan for monitoring payment of prevailing wages for such Element and shall implement such plan at Developer’s expense. For purposes of this paragraph, “construction” includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, and work

performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite.

Developer shall indemnify, defend (with counsel approved by City) and hold the City, and its respective elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the “**Indemnitees**”) harmless from and against all liability, loss, cost, expense (including without limitation attorneys’ fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively “**Claims**”) which 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, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Developer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Developer which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Developer’s deposit with City of any of the insurance policies described in this Agreement. The provisions of this Section shall survive the expiration or earlier termination of this Agreement and the issuance of Certificates of Occupancy for the Project. Developer’s indemnification obligations under this Section shall not apply to any Claim which arises as a result of an Indemnitee’s gross negligence or willful misconduct.

1.6.2 Developer Hotel. Developer shall enter into a labor peace agreement with the appropriate labor organization regarding the operation of the Developer Hotel located on the Developer Hotel Parcel. The Developer Hotel Ground Lease shall require the operator of the Developer Hotel operated thereon to adhere to such labor peace agreement.

1.6.3 Local Hiring. It is in the interests of City, its residents and local businesses to encourage development within the City boundaries that strengthens the local economy by providing jobs and increasing economic activity overall. The construction of the Project will directly create construction jobs and indirectly could increase ancillary and complementary jobs that support the Project’s construction activities. City has a strong public interest in encouraging hiring local firms and business for major projects with the City. In order to further these goals, Developer shall make a good faith effort to contract with appropriate businesses located in San Leandro for both professionals and construction trades that will be working on the Project construction, subject to the following standards:

(a) For the purpose of this Section 1.6.3, a business is located in San Leandro if it has a physical presence within the City limits and has applied for and received a local business license; such business may also have offices outside the City.

(b) Developer shall conduct outreach to make City businesses aware of the availability of Project related contracts by (a) advertising such opportunities in the local

newspaper(s)), as well as websites, trade association publications, trade journals, or other applicable media, not less than twenty (20) calendar days before the date bids are due; (b) holding at least two advertised open houses in the vicinity of the Project to encourage local businesses to come and learn about the Project and how they might be engaged to work on the Project; and (c) requesting assistance from San Leandro community organizations, contractors or professional groups, local state or federal business assistance offices or other organizations that provide assistance in the recruitment and placement of San Leandro businesses. Developer shall keep records of these outreach efforts and shall provide them, as well as a listing all contact information for any San Leandro business or nonprofit organization that will participate in the project, or provide services or supplies to the prime contractor, to the City upon request.

(c) Developer and its contractors and subcontractors shall consider in good faith all applications submitted by local businesses in accordance with their normal practice to engage the most qualified business for each position and make a good faith effort to hire local businesses.

(d) Developer retains the sole and absolute discretion to engage both professional and construction firms it deems best qualified for the tasks to be performed.

(e) The requirements of this Section 1.6.3 shall continue until the issuance of the first temporary certificate of occupancy for each Element of the Project.

(f) The requirements of this Section 1.6.3 are limited to the construction activities of the Project.

1.7. Performance Bonds and Payment Bonds.

Prior to commencement of any construction work on the Project, Developer shall cause its general contractor for each Element of the Project to deliver to the City copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction for each Element of the Project. The bonds shall name the City as obligee and shall be in a form acceptable to the City Attorney. The bonds for each Element of the Project shall remain in place and in full force until release by the City upon completion of the Element as determined by the City. The Golf Course Element shall be accepted by the City Council prior to the release of any bonds for such work. In lieu of such performance and payment bonds, subject to City Attorney's approval of the form and substance thereof, Developer may submit evidence satisfactory to the City of contractor's ability to commence and complete construction of the Project in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution acceptable to the City, with signature authority of the City required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to City. If proposed by Developer, the City shall reasonably consider the use of subguard bonds for construction of private improvements by or on behalf of the Developer or its assigns (but not public improvements to be constructed by or on behalf of the Developer or its assigns). Such evidence must be submitted to City in approvable form in sufficient time to allow for review and approval prior to the scheduled construction start date.

1.8. Mitigation Monitoring and Reporting Program (MMRP).

Developer shall be solely responsible for conducting, and paying for, all mitigation and reporting measures required by the Mitigation Monitoring and Reporting Program (MMRP).

ARTICLE 2.

DEVELOPMENT APPROVALS FOR THE PROJECT

2.1. Project Approvals. In order to develop the Project as contemplated in this Agreement, the Project will require land use approvals, entitlements, development permits, and use and/or construction approvals, which may include, without limitation: vesting tentative maps, development plans, conditional use permits, variances, subdivision approvals, street abandonments, design review approvals, demolition permits, improvement agreements, infrastructure agreements, grading permits, building permits, right-of-way permits, lot line adjustments, site plans, sewer and water connection permits, certificates of occupancy, parcel maps, lot splits, landscaping plans, master sign programs, transportation demand management programs, encroachment permits, and amendments thereto and to the Project Approvals. Developer shall apply for and obtain all such environmental and land use approvals and entitlements related to the development of the Project. For purposes of this Agreement, the term “**Project Approvals**” means all of the approvals, plans and agreements described in this Section 2.1. City and Developer agree to work diligently and in good faith toward appropriate planning entitlements and building permit approvals for each phase of construction.

2.1.1. CEQA. The FEIR, which was prepared pursuant to CEQA, was recommended for adoption by the Planning Commission on June 18, 2015, and adopted with findings by the City Council on July 20, 2015, by Resolution No. 2015-125. The FEIR Addendum, based upon changes in the Project after the FEIR was certified by the City Council and was prepared pursuant to CEQA, was recommended for adoption by the Planning Commission on February 6, 2020 and adopted with findings by the City Council on February 24, 2020 by Resolution No. _____. In the event any further CEQA documentation or approvals are required for the Project, Developer shall apply for and obtain such further CEQA documentation and approvals at Developer’s expense.

2.1.2. BCDC. City shall apply for and obtain any and all necessary permits and authorizations from the San Francisco Bay Conservation and Development Commission (“**BCDC**”) that are required for the Park Element. Developer shall apply for and obtain any and all necessary permits and authorizations from BCDC that are required for the Project Elements to be constructed by Developer, if any are so required. Developer shall cooperate with City with respect to any applications and presentations that are made by the City to BCDC with respect to the Park Element and the Project, and if required by BCDC, each Party shall, at its sole expense, prepare all materials required for all of its presentations to be made to BCDC with respect to the Project.

2.1.3. Development Agreement. Developer and City staff shall negotiate diligently and in good faith with each other towards the preparation of a mutually acceptable Development Agreement for the Project within twelve (12) months from the Agreement Date, as set forth in the Schedule of Performance.

2.1.4. Vested-Tentative Map and Single-Family Element Approvals. Developer shall process the vested-tentative map, the planned development permit, and the related entitlements for the Single-Family Element, as well as all other Elements of the Project as required. Developer shall process a single lot subdivision map for the Single Family Element for approval of the City. Developer shall process a subsequent subdivision map for the Single Family Element as a Project Approval, and the number of Townhome Lots, Detached Lots and total Lots in the Single Family Element shall be determined based upon the subsequent subdivision map which is approved by the City.

2.1.5. Construction Plans. Before commencement of construction of the Project or other works of improvement upon the Property, and at or prior to the times set forth herein, the Developer shall submit to the City any plans and drawings (collectively, the “Construction Plans”) which may be required by the City under the City Municipal Code with respect to any permits and entitlements which are required to be obtained to develop the Project. Developer, on or prior to the date set forth in the Schedule of Performance, shall submit to the City such plans for the Project as are required by the City under the City Municipal Code in order for Developer to obtain demolition, grading, building and other required permits for the Project. If City disapproves any portion of the Construction Plans, such disapproval shall be in writing and shall specify the basis for disapproval in reasonable detail, together with a description of reasonable proposed modifications as shall render the Construction Plans acceptable to City. If City disapproves any portion of the Construction Plans, Developer shall discuss the City’s objections with City staff and City and Developer shall work together in good faith towards modifications of the Construction Plans that are mutually acceptable to City and Developer. In addition, Developer shall submit to the City for its approval, which shall not be unreasonably withheld, a Construction Management Plan for each Element which addresses the phasing of construction, construction traffic and delivery of soil and building materials, noise issues, and other related issues. The Construction Management Plan shall include a provision for personnel responsible for receiving and addressing noise and traffic inquiries and complaints from the community.

2.2. City Review and Approval. The City shall have all rights to review and approve or disapprove all Project Approvals and other required submittals in accordance with the City Municipal Code, and shall apply the same standards to and shall retain the same discretion over such matters as it has with respect to any other development applications submitted to the City. Nothing set forth in this Agreement shall be construed as the City’s approval of any or all of the Project Approvals. This Agreement does not require that City comply with the implied covenant of good faith and fair dealing in reviewing and approving or disapproving Project Approvals and other required submittals with respect to the Project. In no event shall City’s disapproval or failure to approve the Project Approvals and/or other required submittals be deemed a breach or Default of this Agreement. In the event that the Project Approvals and/or other required submittals as approved herein are materially different than as described in the Scope of Development, City and Developer shall each approve such changes in writing as a condition to City’s conveyance of the applicable Element to Developer.

2.3. Defects in Plans. The City shall not be responsible either to the Developer or to third parties in any way for any defects in the Construction Plans, nor for any structural or other

defects in any work done according to the approved Construction Plans, nor for any delays reasonably caused by the review and approval processes established by this Article 2.

2.4. City Discretion. This Agreement does not require that City comply with the implied covenant of good faith and fair dealing in reviewing and approving or disapproving land use and other entitlements, permits, and approvals with respect to the Project. In no event shall City's disapproval or failure to approve the Development Agreement or any land use and/or other entitlements, permits, and approvals with respect to the Project, or City's amendment of the general plan, zoning or other land use designations applicable to the Property or the Project, be deemed a breach or Default of this Agreement. In the event that the Project as approved herein is materially different than the Project as described in the Scope of Development, City and Developer shall each approve such changes in writing as a condition precedent to the conveyance of the applicable Element.

2.5. Site Condition. Developer shall have the opportunity to visit and investigate each portion of the Property prior to Developer's acquisition of such portion of the Property, and to satisfy itself as to the current condition of the Property. City shall grant Developer and its representatives and agents a right of entry during the term of this Agreement to enter upon the portions of the Property owned by the City for purposes of conducting Developer's due diligence inspection, provided that Developer shall (a) give City twenty-four (24) hours telephone or written notice of any intended access which involves work on the Property or may result in any impairment of the use of the Property by its current occupants; (b) access the Property in a safe manner; (c) conduct no invasive testing or boring without the written consent of the City; (d) comply with all laws and obtain all permits required in connection with such access; and (e) conduct inspections and testing, subject to the rights of existing tenants of the Property, if any (which inspections and testing, if conducted at times other than normal business hours, shall be conducted only after obtaining the City's written consent, which shall not be unreasonably withheld). The right of entry agreement shall be in writing in a form approved by the City and shall contain an indemnity provision stating that the Developer shall indemnify, protect, defend, and hold harmless the City and its elected officials, officers, employees, representatives, members, and agents ("Indemnitees") from and against any and all losses, liabilities, damages, claims or costs (including attorneys' fees), arising out of the Developer's entry upon the Property. This indemnity obligation shall survive the termination of the right of entry agreement. The Developer's obligations to indemnify Indemnitees shall not extend to losses to the extent such losses arise out of the negligence or willful misconduct of one or more Indemnitees.

2.6. As Is Conveyance. Developer understands and acknowledges that the rights conveyed to the Developer under this Agreement are for the Property in an "as is" condition, with no warranty, express or implied, by the City as to the physical condition including, but not limited to, the soil, its geology, or the presence of known or unknown faults or Hazardous Materials or hazardous waste (as defined by state and federal law); provided, however, that the foregoing shall not relieve the City from any legal obligation it may have regarding the disclosure of any such conditions of which the City has actual knowledge. City hereby discloses to Developer the actual knowledge City has with respect to the deposit of hazardous materials on the Property, which is described in Exhibit K hereto and incorporated herein. Developer shall be

responsible for any necessary demolition, grading or other work necessary to prepare the Property for the Project.

2.7. Pre-Closing Work. Developer may request City approval to perform certain work upon the Property prior to the close of escrow for the Single Family PSA or commencement of any of the Ground Leases. Such work may include, without limitation, demolition of existing buildings and improvements on the Property, deposit of soil upon portions of the Property in accordance with Section 1.4.17 hereof, and other site preparation work. Such request shall be in writing, and shall include a narrative description of the work which Developer proposes to undertake and such engineering and/or architectural plans and drawings as may be required by the City and other governmental agencies with jurisdiction over such proposed work. City's approval of the requested work may be granted or denied in City's sole discretion. In the event City approves the requested work, City and Developer shall enter into a right of entry agreement in the form described in Section 2.5 hereof. Any work performed by Developer hereunder shall be at the sole risk of Developer, and City shall not be responsible to compensate Developer for any such work performed upon the Property. Developer shall comply with all laws and obtain all permits required in connection with such work.

2.8. Not a Development Agreement. The Parties acknowledge that this Agreement does not contain the required elements of a "development agreement" as defined in Government Code Section 65864, *et seq.* This Agreement does not address the fundamental purpose of a development agreement in that it does not grant any vested rights to the Developer or provide any assurance to the Developer that upon approval of the Project, the Developer may proceed with the Project in accordance with existing policies, rules and regulations, and conditions of approval. Instead, this Agreement provides that the Project will be required to comply with any applicable rules, regulations and policies governing permitted uses of the land, density, design, improvement and construction standards and specifications applicable to the Project, whether or not in conflict with rules, regulations or policies existing as of the date of this Agreement. Accordingly, the Parties agree that this Agreement is not a development agreement as defined in Government Code Section 65864, *et seq.*

ARTICLE 3.
[Deleted]

ARTICLE 4.
AMENDMENTS

4.1. Amendments. Any amendments to this Agreement shall be made in writing executed by the parties hereto, and neither Developer nor City shall be bound by verbal or implied agreements. The City Manager (or designee) shall be authorized to enter into certain amendments to this Agreement on behalf of the City in accordance with Section 9.18 hereof.

4.2. Amendments Requested by Lenders. In the event that Developer or its Lender requests any amendments to this Agreement, or any of the documents to be executed pursuant to this Agreement, the City shall reasonably consider such request. Any costs incurred by the City

in connection with such amendments requested by Developer or its Lender, including without limitation attorneys' fees and consultants' fees for the review of the request and preparation of an amendment, shall be borne by the Developer.

ARTICLE 5.
DEFAULT, REMEDIES AND TERMINATION

5.1. Events of Default.

Subject to any extensions of time by mutual consent of the Parties in writing, and subject to the provisions of Section 9.2 hereof regarding permitted delays and a Mortgagee's right to cure pursuant to Section 8.3 hereof, any failure by either Party to perform any material term or provision of this Agreement (not including any failure by Developer to perform any term or provision of any Project Approvals) shall constitute an "Event of Default," (i) if such defaulting Party does not cure such failure within ninety (90) days (such ninety (90) day period is not in addition to any ninety (90) day cure period under Section 3.5, if Section 3.5 is applicable) following written notice of default from the other Party, where such failure is of a nature that can be cured within such ninety (90) day period, or (ii) if such failure is not of a nature which can be cured within such ninety (90) day period, the defaulting Party does not within such ninety (90) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

Any notice of default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Event of Default, all facts constituting substantial evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in default for purposes of (a) termination of this Agreement, (b) institution of legal proceedings with respect thereto, or (c) issuance of any approval with respect to the Project. The waiver by either Party of any default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

5.2. Meet and Confer.

During the time periods specified in Section 5.1 for cure of a failure of performance, the Parties shall meet and confer in a timely and responsive manner, to attempt to resolve any matters prior to litigation or other action being taken, including without limitation any action in law or equity; provided, however, nothing herein shall be construed to extend the time period for this meet and confer obligation beyond the 90-day cure period referred to in Section 5.1 (even if the 90-day cure period itself is extended pursuant to Section 5.1(ii)) unless the Parties agree otherwise in writing.

5.3. Remedies and Termination.

If, after notice and expiration of the cure periods and procedures set forth in Sections 5.1 and 5.2, the alleged Event of Default is not cured, the non-defaulting Party, at its option, may institute legal proceedings pursuant to Section 5.4 of this Agreement and/or terminate this Agreement pursuant to Section 5.6 herein. In the event that this Agreement is terminated

pursuant to Section 5.6 herein and litigation is instituted that results in a final decision that such termination was improper, then this Agreement shall immediately be reinstated as though it had never been terminated.

5.4. Legal Action by Parties.

5.4.1. Remedies. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto or to obtain any remedies consistent with the purpose of this Agreement. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy.

5.4.2. No Damages. In no event shall either Party, or its boards, commissions, officers, agents or employees, be liable in damages for any default under this Agreement, it being expressly understood and agreed that the sole legal remedy available to either Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement including, but not limited to obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Agreement by the other Party.

5.5. Remedies in Conveyance Agreements. Nothing in this Agreement shall modify any rights or remedies the Parties may have under the Single Family Purchase and Sale Agreement, Developer Hotel Ground Lease, Multifamily Ground Lease, Developer Restaurant Ground Lease, Market Ground Lease, Public Improvements Agreement, or any other agreements entered into between the Parties to carry out and implement this Agreement.

5.6. Termination.

5.6.1. Expiration of Term. Except as otherwise provided in this Agreement, this Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Agreement as set forth in Section 1.3.

5.6.2. Survival of Obligations. Upon the termination or expiration of this Agreement as provided herein, neither Party shall have any further right or obligation with respect to the Property under this Agreement except with respect to any obligation that is

specifically set forth as surviving the termination or expiration of this Agreement. The termination or expiration of this Agreement shall not affect the validity of the Project Approvals for the Project.

5.6.3. Termination by City. Notwithstanding any other provision of this Agreement, City shall not have the right to terminate this Agreement with respect to all or any portion of the Property before the expiration of its Term unless there is an alleged Event of Default by Developer and such Event of Default is not cured pursuant to this Article 5 and Developer has first been afforded an opportunity to be heard regarding the alleged default before the City Council and this Agreement is terminated only with respect to that portion of the Property to which the default applies.

5.6.4 Termination With Respect to Property Conveyance. Notwithstanding the foregoing, either party hereto shall have the right to terminate its obligations with respect to the conveyance of a specific Element of the conveyance of the Property if the conditions precedent to such conveyance have not been satisfied or waived prior to the date set forth therefor in the Schedule of Performance. In the event that a specific Element or Elements of the Property conveyance is terminated as provided in this Section 5.6.4, the parties' obligations with respect to the other Elements of the Property which have not been terminated shall remain in full force and effect.

ARTICLE 6. COOPERATION AND IMPLEMENTATION

6.1. Further Actions and Instruments.

Each Party to this Agreement shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this Agreement, subject to satisfaction of the conditions of this Agreement. Upon the request of any Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

6.2. Regulation by Other Public Agencies.

Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Agreement in all respects when dealing with any such agency regarding the Property. To the extent that City, the City Council, the Planning Commission or any other board, agency, committee, department or commission of City constitutes and sits as any other board, agency, commission, committee, or department, it shall not take any action that conflicts with City's obligations under this Agreement unless required to by any State or Federal law.

6.3. Other Governmental Permits and Approvals; Grants.

Developer shall apply in a timely manner in accordance with Developer's construction schedule for the permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. Developer shall comply with all such permits, requirements and approvals. City shall cooperate with Developer in its endeavors to obtain (a) such permits and approvals and (b) any grants for the Project for which Developer applies.

6.4. Cooperation in the Event of Legal Challenge.

6.4.1. The filing of any third-party lawsuit(s) against City or Developer relating to this Agreement, or other development issues affecting the Property shall not delay or stop the development, processing or construction of the Project or approval of any Project Approvals, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order.

6.4.2. In the event of any administrative, legal or equitable action instituted by a third party challenging the validity of any provision of this Agreement, the procedures leading to its adoption, Developer and City each shall have the right, in its sole discretion, to elect whether or not to defend such action, to select its own counsel, and to control its participation and conduct in the litigation in all respects permitted by law. Developer shall pay for all of City's documented legal costs related to any action challenging the validity of any provision of this Agreement, or procedures leading to its adoption. If both Parties elect to defend, the Parties hereby agree to affirmatively cooperate in defending said action and to execute a joint defense and confidentiality agreement in order to share and protect information, under the joint defense privilege recognized under applicable law. As part of the cooperation in defending an action, City and Developer shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information. Developer and City shall each have sole discretion to terminate its defense at any time. City retains the option to select and employ independent defense counsel at its own expense. If, in the exercise of its sole discretion, Developer agrees to pay for defense counsel for City, Developer shall jointly participate in the selection of such counsel.

6.5. Revision to Project.

In the event of a court order issued as a result of a successful legal challenge, City shall, after exhausting all appeals and to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as consistent with the Scope of Development and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Scope of Development, or (ii) any conflict with the Scope of Development or frustration of the intent or purpose of the Scope of Development.

6.6. State, Federal or Case Law.

Where any state, federal or case law allows City to exercise any discretion or take any act with respect to that law, City shall, in an expeditious and timely manner, at the earliest possible

time, (a) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement and (b) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

6.7. Defense of Agreement.

City shall take all actions that are necessary or advisable to uphold the validity and enforceability of this Agreement. If this Agreement is adjudicated or determined to be invalid or unenforceable, City agrees, subject to all legal requirements, to consider modifications to this Agreement to render it valid and enforceable to the extent permitted by applicable law. Developer shall pay all of City's documented costs, including attorneys' fees and experts' costs, incurred to modify or defend this Agreement.

ARTICLE 7.
TRANSFERS AND ASSIGNMENTS

7.1. Right to Assign.

The Parties understand and anticipate that Developer may seek to transfer its rights and responsibilities under this Agreement with respect to one or more specific Elements of the Project to a person or entity with experience in the development of the type of Element proposed to be transferred. Developer shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property, the Project, or this Agreement prior to the completion of the Project, without the prior written approval of City, which approval shall not be unreasonably withheld, conditioned or delayed.

7.1.1 Process for City Approval of Transfer. Prior to any Transfer hereunder, Developer shall submit to City detailed written information regarding the proposed transferee's development experience as relevant to the proposed Transfer, detailed information with respect to the financial capacity of the proposed transferee, and the form of a proposed assignment and assumption agreement which requires the assignee to comply with the assigned sections of this Agreement. Upon receipt of Developer's submission City may request further information regarding the experience and financial capacity of the proposed transferee, and such requests shall not be considered an unreasonable withholding or delay of the City's consent.

7.1.2 Assignment and Assumption Agreement. Any such assignment made in compliance with this Section 7.1 shall be evidenced by a written assignment and assumption agreement in a form approved by the City Attorney, which agreement shall set forth in detail the assignee's specific duties under this Agreement.

7.1.3 Change of Ownership. In addition to the foregoing, prior to the completion of the Project, except as expressly permitted by this Agreement, Developer shall not undergo any significant change of ownership without the prior written approval of City, which approval shall not be unreasonably withheld, conditioned or delayed. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than fifty percent (50%) in aggregate of the present ownership and /or control of

Developer, taking all transfers into account on a cumulative basis; provided however, neither the admission of investor limited partners, nor the transfer of beneficial or ownership interests by an investor limited partner to subsequent limited partners shall be restricted by this provision, nor shall the admission of a Passive Investor Member nor the transfer of a beneficial or ownership interest by a Passive Investor Member to another Passive Investor Member be restricted by this provision. "Passive Investor Member" means a member who pursuant to Developer's operating agreement is not authorized to actively manage or otherwise operate the business of the company.

7.1.4 Transfer to Affiliates. Notwithstanding anything to the contrary contained in this Section 7.1, Developer may Transfer, in whole or in part, the Property, the Project, or this Agreement to any "Affiliate" of Developer, without the prior written approval of City. As used herein, the term "Affiliate" means, with respect to Developer, (a) any person or entity who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Developer, or (b) any individual or entity in which Developer has a 50.1% or more beneficial interest. A person or entity shall be deemed to control a person or entity if it has the power to direct the management, operations or business of such person or entity. The term "beneficial owner" is to be determined in accordance with Rule 13d promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

7.2. Release upon Transfer.

Upon the Transfer of Developer's rights and interests under this Agreement pursuant to Section 7.1, Developer shall automatically be released from its obligations and liabilities under this Agreement with respect to that portion of the Property transferred, and any subsequent default or breach with respect to the Transferred rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Agreement, provided that (i) City has consented to the Transfer, and (ii) the transferee executes and delivers to City an assignment and assumption agreement in accordance with Section 7.1.2 hereof. Upon any transfer of any portion of the Property and the express assumption of Developer's obligations under this Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Developer's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferor and the transferee shall each be solely responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferor/transferee, and any amendment to this Agreement between City and a transferor or a transferee shall only affect the portion of the Property owned by such transferor or transferee. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 7.3 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.

7.3. Covenants Binding on Successors and Assigns.

All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective successors (by merger, reorganization, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all of the persons or entities acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors (by merger, consolidation or otherwise) and assigns.

ARTICLE 8.

MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE

8.1. Mortgagee Protection.

This Agreement shall not prevent or limit Developer in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property ("**Mortgage**"). No breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and inure to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

8.2. Mortgagee Not Obligated.

Notwithstanding the provisions of Section 8.1 above, no Mortgagee shall have any obligation or duty under this Agreement to perform Developer's obligations or other affirmative covenants of Developer hereunder; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

8.3. Notice of Default to Mortgagee; Right of Mortgagee to Cure.

If City receives a notice from a Mortgagee requesting a copy of any Notice of Default given to Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed a default, and if City makes a determination of noncompliance hereunder, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Developer. Each Mortgagee shall have the right (but not the obligation) during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's notice.

8.4. No Supersedure.

Nothing in this Article 8 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision improvement agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Article 8 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 8.3.

8.5. Technical Amendments.

City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for the acquisition and construction of the improvements on the Property or any refinancing thereof and to otherwise cooperate in good faith to facilitate Developer's negotiations with lenders.

ARTICLE 9.
MISCELLANEOUS PROVISIONS

9.1. Limitation on Liability.

Notwithstanding anything to the contrary contained in this Agreement, in no event shall: (a) any partner, officer, director, member, shareholder, employee, affiliate, manager, representative, or agent of Developer or any general partner of Developer or its general partners be personally liable for any breach of this Agreement by Developer, or for any amount which may become due to City under the terms of this Agreement; or (b) any member, officer, agent or employee of City be personally liable for any breach of this Agreement by City or for any amount which may become due to Developer under the terms of this Agreement.

9.2. Force Majeure.

The Term of this Agreement and the time within which a Party shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock-outs and other labor difficulties, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, changes in local, state or federal laws or regulations, without limitation of City's obligations under this Agreement, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services prevents, prohibits or delays construction of the Project, enemy action, civil disturbances, wars, terrorist acts, fire, floods, earthquakes, unavoidable casualties, litigation involving this Agreement, or bankruptcy, insolvency or defaults of Project lenders or equity investors. Delays for any other reasons, including without limitation delays due to inability to obtain financing, or recession or other general economic conditions, shall not constitute events of force majeure pursuant to this Agreement; provided that City may approve extensions of time for such reasons upon the request of Developer, in City's sole discretion. Such extension(s) of time shall not constitute an Event of Default and shall occur at the request of any Party. In addition, the Term of this Agreement shall not include any period of time during which (i) a development moratorium including, but not limited to, a water, sewer or other public

utility moratorium, is in effect; (ii) the actions of public agencies that regulate land use, development or the provision of services to the Property prevent, prohibit or delay either the construction, funding or development of the Project or (iii) there is any mediation, arbitration; litigation or other administrative or judicial proceeding pending involving the Project Approvals. Furthermore, in the event the issuance of a building permit for any part of the Project is delayed as a result of Developer's inability to obtain any other required permit or approval due to delays caused by City or other governmental agencies, then the Term of this Agreement shall be extended by the period of any such delay.

9.3. Notices, Demands and Communications Between the Parties.

Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if delivered personally (including delivery by private courier), dispatched by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized overnight courier service, or by electronic facsimile transmission followed by delivery of a "hard" copy to the offices of City and Developer indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either Party may from time-to-time designate in writing at least fifteen (15) days prior to the name and/or address change and as provided in this Section 9.3.

City: City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: Community Development Director

with copies to: City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: City Attorney

Developer: Cal Coast Development, Inc.
11755 Wilshire Boulevard, Suite 1660
Los Angeles, CA 90025
Attn: Edward J. Miller

with copies to: Nicholas F. Klein, Esq.
11755 Wilshire Boulevard, Suite 1660
Los Angeles, CA 90025

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addresses designated above as the Party to whom notices are to be sent, or (ii) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by overnight courier service as provided above shall be deemed to have been received

twenty-four (24) hours after the date of deposit. Notices delivered by electronic facsimile transmission shall be deemed received upon receipt of sender of electronic confirmation of delivery, provided that a “hard” copy is delivered as provided above.

9.4. Project as a Private Undertaking; No Joint Venture or Partnership. The Project constitutes private development, neither City nor Developer is acting as the agent of the other in any respect hereunder, and City and Developer are independent entities with respect to the terms and conditions of this Agreement. Nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making City and Developer joint venturers or partners.

9.5. Severability.

If any terms or provision(s) of this Agreement or the application of any term(s) or provision(s) of this Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement or the application of this Agreement to other situations, shall remain in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, Developer (in its sole and absolute discretion) may terminate this Agreement by providing written notice of such termination to City.

9.6. Section Headings.

Article and Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement.

9.7. Construction of Agreement.

This Agreement has been reviewed and revised by legal counsel for both Developer and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

9.8. Entire Agreement.

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement consists of _____ () pages including the Recitals and exhibits attached hereto and incorporated by reference herein, which constitute the entire understanding and agreement of the Parties and supersedes all negotiations or previous

agreements between the Parties with respect to all or any part of the subject matter hereof. The exhibits and appendices are as follows:

Exhibit A	Map of the Property
Exhibit B	Single Family Parcel Legal Description
Exhibit C	Golf-Course Parcel Legal Description
Exhibit D	Developer Hotel Parcel Legal Description
Exhibit E	Multifamily Parcel Legal Description
Exhibit F	Developer Restaurant Parcel Legal Description
Exhibit G	Market Parcel Legal Description
Exhibit H	Park Parcel Legal Description
Exhibit I	Scope of Development
Exhibit J	Schedule of Performance
Exhibit K	Environmental Disclosure
Exhibit L	Single Family Parcel Purchase and Sale Agreement
Exhibit M	Developer Hotel Parcel Ground Lease
Exhibit N	Multifamily Parcel Ground Lease
Exhibit O	Developer Restaurant Parcel Ground Lease
Exhibit P	Market Parcel Ground Lease
Exhibit Q	Public Improvement Agreement
Exhibit R	Shoreline Responsibility Map

9.9. Calendar Days.

Unless otherwise expressly provided for herein, all references to any amount of days shall be a reference to calendar days.

9.10. Estoppel Certificates.

Either Party may, at any time during the Term of this Agreement, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, or if amended; identifying the amendments, (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (iv) any other information reasonably requested. The Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within twenty (20) days following the receipt thereof. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that this Agreement is in full force and effect and no modification or default exists. Either the City Manager or designee shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

9.11. No Waiver.

No delay or omission by either Party in exercising any right or power accruing upon noncompliance or failure to perform by the other Party under any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be performed by the other Party shall be in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

9.12. Time Is of the Essence.

Time is of the essence for each provision of this Agreement for which time is an element.

9.13. Applicable Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

9.14. Attorneys' Fees.

Should any legal action be brought by either Party because of a breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, experts' fees, court costs and such other costs as may be found by the court from the other Party.

9.15. Third Party Beneficiaries.

Except as otherwise provided herein, City and Developer hereby renounce the existence of any third-party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

9.16. Constructive Notice and Acceptance.

Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

9.17. Counterparts.

This Agreement may be executed by each Party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

9.18. City Approvals and Actions.

The City shall maintain authority of this Agreement and the authority to implement this Agreement through the City Manager (or designee). The City Manager (or designee) shall have the authority to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of this Agreement on behalf of the City so long as such actions do not materially or substantially change the uses or construction permitted on the Property, or materially or substantially add to the costs incurred or to be incurred by the City as specified herein, or materially or substantially reduce the revenue earned or to be earned by City, and such interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council. Notwithstanding the foregoing, the City Manager shall maintain the right to submit to the City Council for consideration or action any matter under the City Manager's authority if the City Manager desires to do so. The City Manager may delegate some or all of his or her powers and duties under this Agreement to one or more management level employees of the City.

9.19. Authority.

The persons signing below represent and warrant that they have the authority to bind their respective Party and that all necessary board of directors', shareholders', partners', city councils', or other approvals have been obtained.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first set forth above.

DEVELOPER:

Cal Coast Companies LLC, Inc.,
a Delaware corporation doing
business in California as Cal Coast
Developer, Inc.

By: _____
Edward J. Miller
Title: Authorized Signatory

CITY:

CITY OF SAN LEANDRO
a California Charter City

By: _____
Name: Jeff Kay
Title: City Manager

ATTESTATION:

By: _____
Leticia I. Miguel
City Clerk

APPROVED AS TO FORM:

By: _____
Richard Pio Roda
City Attorney

EXHIBIT B

SINGLE FAMILY PARCEL LEGAL DESCRIPTION

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on September 13, 1963 in Reel 990 at Image 651, Official Records of Alameda County, and a Real property, situated in the City of San Leandro, County of Alameda, State of California; and a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County, being more particularly described as follows:

Beginning at the most easterly corner of said Lands of the City of San Leandro (Re: 990 Im: 651), said corner being also the intersection of the southeasterly line of Fairway Drive (formerly Second Avenue), being 80.00 feet in width, with the southwesterly line of Aurora Drive (formerly Kenmore Avenue), being 50.00 feet in width, as said Second Avenue and said Kenmore Avenue are shown on that certain Map entitled "Mulford Gardens Manor", filed for record on May 1, 1929 in Book 8 of Maps at Page 5, Records of Alameda County;

Thence leaving said point and along said southwesterly line of Aurora Drive, the following courses and distances:

- South 63°18'08" West, 5.00 feet to the beginning of a non-tangent curve, concave Westerly, having a radius of 30.00 feet, with a radial line that bears North 62°30'00" East;
- Southerly along said curve, through a central angle of 90°48'08", for an arc length of 47.54 feet to the northwesterly line of said Fairway Drive;

Thence along said northwesterly line of Fairway Drive, the following courses and distances:

- South 63°18'08" West, 463.43 feet to the beginning of a curve to the left, having a radius of 840.00 feet;
- Southwesterly along said curve, through a central angle of 11°06'46", for an arc length of 162.92 feet to the beginning of a reverse curve, concave to the Northwest, having a radius of 760.00 feet;
- Southwesterly along said curve through a central angle of 11°06'47", for an arc length of 147.41 feet;
- South 63°18'10" West, 267.44 feet to the **TRUE POINT OF BEGINNING** of this description;

Thence leaving said point and continuing along said northwesterly line of Fairway Drive, the following courses and distances:

- South 63°18'10" West, 367.68 feet to the beginning of a curve to the right, having a radius of 30.00 feet;
- Westerly along said curve, through a central angle of 81°37'46", for an arc length of 42.74 feet to a point on the northeasterly line of Monarch Bay Drive, being 84.00 feet in width;

Thence along said northeasterly line of Monarch Bay Drive, the following courses and distances:

North 35°04'04" West, 405.83 feet to the beginning of a curve to the right, having a radius of 1,100.00 feet; Northwesterly along said curve, through a central angle of 04°44'50", for an arc length of 91.14 feet;

Thence leaving said northeasterly line of Monarch Bay Drive, the following courses and distances:

- North 62°55'28" East, 53.25 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Northerly along said curve, through a central angle of 90°00'00", for an arc length of 47.12 feet;
- North 27°04'32" West, 25.00 feet;
- South 62°55'28" West, 84.99 feet to said northeasterly line of Monarch Bay Drive, said point being also the beginning of a non-tangent curve, concave to the Northeast, having a radius of 1,100.00 feet, with a radial line that bears South 62°32'46" West;

Thence along said Monarch Bay Drive, the following courses and distances:

- Northwesterly along said curve, through a central angle of 06°53'12", for an arc length of 132.22 feet;
- North 20°34'02" West, 496.33 feet to the beginning of a curve to the left, having a radius of 642.00 feet;
- Northwesterly along said curve, through a central angle of 18°56'39", for an arc length of 212.27 feet;
- North 39°30'41" West, 20.54 feet to the beginning of a curve to the right, having a radius of 526.00 feet;
- Northerly along said curve, through a central angle of 58°50'17", for an arc length of 540.16 feet to the beginning of a non-tangent curve, concave to the Southeast, having a radius of 352.23 feet, with a radial line that bears North 70°39'59" West;
- Northeasterly along said curve, through a central angle of 41°34'58", for an arc length of 255.63 feet;
- South 27°16'28" East, 54.01 feet;
- North 62°43'32" East, 42.41 feet to the southwesterly line of Block U, as said Block is shown on that certain Map entitled "Mulford Gardens Addition", filed for record on February 1, 1928 in Book 7 of Maps at Page 55, Records of said County;

Thence along said southwesterly line of Block U and Block V of said Map, South 27°30'00" East, 543.19 feet;

Thence leaving said southwesterly line, the following courses and distances:

- South 62°30'00" West, 17.13 feet;
- South 20°33'26" East, 134.14 feet;
- South 69°26'34" West, 80.00 feet;
- South 20°33'26" East, 726.01 feet;
- South 34°04'02" East, 130.39 feet;
- North 71°53'55" East, 180.71 feet to the beginning of a non-tangent curve, concave to the Southwest, having a radius of 50.00 feet, with a radial line that bears North 18°37'44" West;
- Southeasterly along said curve, through a central angle of 89°56'49", for an arc length of 78.49 feet;
- South 18°40'54" East, 370.01 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing 708,087 square feet or 16.225 acres, more or less.

EXHIBIT C

GOLF COURSE PARCEL LEGAL DESCRIPTION

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on September 13, 1963 in Reel 990 at Image 651, Official Records of Alameda County, and a Real property, situated in the City of San Leandro, County of Alameda, State of California; and a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County, being more particularly described as follows:

Beginning at the most easterly corner of said Lands of the City of San Leandro (Re: 990 Im: 651), said corner being also the intersection of the southeasterly line of Fairway Drive (formerly Second Avenue), being 80.00 feet in width, with the southwesterly line of Aurora Drive (formerly Kenmore Avenue), being 50.00 feet in width, as said Second Avenue and said Kenmore Avenue are shown on that certain Map entitled "Mulford Gardens Manor", filed for record on May 1, 1929 in Book 8 of Maps at Page 5, Records of Alameda County;

Thence leaving said point and along said southwesterly line of Aurora Drive, the following courses and distances:

- South 63°18'08" West, 5.00 feet to the beginning of a non-tangent curve, concave Westerly, having a radius of 30.00 feet, with a radial line that bears North 62°30'00" East;
- Southerly along said curve, through a central angle of 90°48'08", for an arc length of 47.54 feet to the northwesterly line of said Fairway Drive;

Thence along said northwesterly line of Fairway Drive, South 63°18'08" West, 230.60 feet to the **TRUE POINT OF BEGINNING** of this description;

Thence leaving said northwesterly line of Fairway Drive;

North 27°30'00" West, 187.16 feet to the southeasterly line of Block W of said Map of "Mulford Gardens Manor";

Thence along said southwesterly line, South 62°30'00" West, 84.00 feet to the southwesterly line of Block W of said Map (8 Maps 5);

Thence along said southwesterly line, North 27°30'00" West, 797.40 feet to the southeasterly line of Block W, as said Block is shown on that certain Map entitled "Mulford Gardens Addition", filed for record on February 1, 1928 in Book 7 of Maps at Page 55, Records of said County;

Thence along said southeasterly line "Mulford Gardens Addition"; (7 Maps 55), South 62°30'00" West, 425.00 feet to the southwesterly line of said Block W of said Map;

Thence along said southwesterly line, North 27°30'00" West, 423.00 feet to the northwesterly line of said Lands (Re: 990 Im: 651);

Thence along said northwesterly line, South 62°30'00" West, 317.13 feet;

Thence leaving said northwesterly line, the following courses and distances:

- South 20°33'26" East, 134.14 feet;
- South 69°26'34" West, 80.00 feet;
- South 20°33'26" East, 726.01 feet;
- South 34°04'02" East, 130.39 feet;
- North 71°53'55" East, 180.71 feet to the beginning of a non-tangent curve, concave to the Southwest, having a radius of 50.00 feet, with a radial line that bears North 18°37'44" West;
- Southeasterly along said curve, through a central angle of 89°56'49", for an arc length of 78.49 feet;
- South 18°40'54" East, 370.01 feet to said northwesterly line of Fairway Drive;

Thence along said northwesterly line of Fairway Drive, the following courses and distances:

North 63°18'10" East, 289.79 feet to the beginning of a curve to the left, having a radius of 760.00 feet;
Northeasterly along said curve, through a central angle of 11°06'47", for an arc length of 147.41 feet to
the beginning of a reverse curve, concave to the Southeast, having a radius of 840.00 feet;
Northeasterly along said curve through a central angle of 11°06'46", for an arc length of 162.92 feet;
North 63°18'08" East, 232.83 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing 1,004,132 square feet or 23.052 acres, more or less.

EXHIBIT D

DEVELOPER HOTEL PARCEL LEGAL DESCRIPTION

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being all of Parcel 2 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County, being more particularly described as follows:

BEGINNING at the most southerly corner of said Parcel 2 (233 M 50-53);

Thence leaving said corner and along the westerly line of said Parcel 2, North 09°00'05" West, 404.34 feet to the northerly line of said Parcel 2;

Thence along said northerly lines of said Parcel 2, the following courses and distances:

- North 80°59'55" East, 85.99 feet;
- North 50°59'55" East, 9.00 feet;
- North 80°59'55" East, 5.01 feet;
- South 24°00'05" East, 158.97 feet;
- North 80°59'55" East, 143.35 feet to the to the southwesterly line of Monarch Bay Drive;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- South 20°34'02" East, 9.95 feet to the beginning of a curve to the left, having a radius of 1,184.00 feet;
- Southeasterly along said curve, through a central angle of 08°34'26", for an arc length of 177.18 feet to the beginning of a reverse curve, concave to the Northwest, having a radius of 30.00 feet;

Thence leaving said southwesterly line of Monarch Bay Drive, southwesterly along said curve through a central angle of 103°39'07", for an arc length of 54.27 feet to the southerly line of said Parcel 2;

Thence along said southerly line, South 74°30'39" West, 310.85 feet to the Point of **BEGINNING**.

Containing 91,694 square feet or 2.105 acres, more or less.

EXHIBIT E

MULTIFAMILY PARCEL LEGAL DESCRIPTION

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of Parcel 3 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County; being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County; being also a portion of the Lands as described in that certain Quitclaim Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on October 9, 1961 in Reel 425 at Image 378, Official Records of said County, being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on August 3, 1962 in Reel 646 at Image 694, Official Records of Alameda County, being more particularly described as follows:

BEGINNING at the most southerly corner of said Parcel 2, as shown on said Parcel Map (223 M 50-53);

Thence leaving said corner, the following courses and distances:

- North 72°26'52" West, 53.79 feet;
- South 72°26'34" West, 239.33 feet;
- South 29°07'04" East, 458.13 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Easterly along said curve, through a central angle of 82°09'06", for an arc length of 43.01 feet;
- North 68°43'50" East, 630.34 feet to the southwesterly line of Monarch Bay Drive;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North 35°04'04" West, 322.24 feet to the beginning of a curve to the right, having a radius of 1,184.00 feet;
- Northwesterly along said curve, through a central angle of 05°55'36", for an arc length of 122.47 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 30.00 feet, with a radial line that bears North 60°51'32" East;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

Southwesterly along said curve, through a central angle of 103°39'07", for an arc length of 54.27 feet;
South 74°30'39" West, 310.85 feet to the Point of **BEGINNING**.

Containing 277,515 square feet or 6.371 acres, more or less.

EXHIBIT F

DEVELOPER RESTAURANT PARCEL LEGAL DESCRIPTION

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being all of Parcel 3, as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County, being more particularly described as follows:

BEGINNING at the most northerly corner of said Parcel 3 (233 M 50-53);

Thence leaving said corner and along the easterly line of said Parcel 3, South 09°00'05" East, 149.74 feet to the southerly line of said Parcel 3;

Thence along said southerly lines of said Parcel 3, the following courses and distances:

- South 80°59'55" West, 38.00 feet;
- South 09°00'05" East, 21.80 feet;
- South 80°59'55" West, 57.00 feet to the westerly line of said Parcel 3;

Thence along said westerly line, North 09°00'05" West, 171.54 feet to the northerly line of said Parcel 3;

Thence along said northerly line, North 80°59'55" East, 95.00 feet to the Point of **BEGINNING**.

Containing 15,468 square feet or 0.355 acres, more or less.

EXHIBIT G

MARKET PARCEL LEGAL DESCRIPTION

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County, being more particularly described as follows:

Beginning the northeasterly corner of Parcel 2 as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County, being also a point on the southwesterly line of Monarch Bay Drive;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North 20°34'02" West, 486.38 feet to the beginning of a curve to the left, having a radius of 558.00 feet;
- Northerly along said curve, through a central angle of 02°46'01", for an arc length of 26.95 feet to the **TRUE POINT OF BEGINNING** of this description;

Thence continuing along said southwesterly line of Monarch Bay Drive, northwesterly along said curve through a central angle of 11°57'32", a distance of 116.47 feet;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

- South 54°23'55" West, 17.46 feet to the beginning of a curve to the left, having a radius of 25.00 feet;
- Southwesterly along said curve, through a central angle of 60°46'01", for an arc length of 26.51 feet;
- South 06°22'06" East, 84.86 feet;
- North 85°26'24" East, 51.31 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 28.00 feet, with a radial line that bears South 04°41'59" East;
- Northeasterly along said curve, through a central angle of 51°03'40", for an arc length of 24.95 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing 6,019 square feet or 0.138 acres, more or less.

EXHIBIT H

PARK LEGAL DESCRIPTION

Real property, situated in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a political corporation, recorded on November 22, 1960 in Reel 211 at Image 738, Official Records of Alameda County; being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of said County; being also a portion of the Lands as described in that certain Quitclaim Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on October 9, 1961 in Reel 425 at Image 378, Official Records of said County, being also a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on August 3, 1962 in Reel 646 at Image 694, Official Records of Alameda County, being more particularly described as follows:

Beginning at the most southerly corner of Parcel 2, as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County;

Thence leaving said corner and along the westerly boundary line of said Parcel 2, North 09°00'05" West, 404.34 feet to the northerly line of said Parcel 2;

Thence along said northerly line of said Parcel 2, the following courses and distances:

North 80°59'55" East, 85.99 feet;
North 50°59'55" East, 14.01 feet;
South 24°00'05" East, 161.56 feet;
North 80°59'55" East, 143.35 feet to the southwesterly line of said Monarch Bay Drive;

Thence along said southwesterly line of Monarch Bay Drive, the following courses and distances:

- North 20°34'02" West, 486.38 feet to the beginning of a curve to the left, having a radius of 558.00 feet;
- Northerly along said curve, through a central angle of 02°46'01", for an arc length of 26.95 feet to the beginning of a non-tangent curve, concave Northwesterly, having a radius of 28.00 feet, with a radial line that bears South 55°45'39" East;

Thence leaving said southwesterly line of Monarch Bay Drive, the following courses and distances:

- Southwesterly along said curve, through a central angle of 51°03'40", for an arc length of 24.95 feet;
- South 85°26'24" West, 572.53 feet;
- North 04°25'13" West, 177.04 feet to the beginning of a non-tangent curve, concave Westerly, having a radius of 180.00 feet, with a radial line that bears South 57°29'56" East;
- Northerly along said curve, through a central angle of 36°55'17", for an arc length of 115.99 feet;
- North 04°25'13" West, 52.42 feet;
- North 85°34'47" East, 15.00 feet;
- North 04°25'13" West, 141.33 feet;

- North 85°34'47" East, 14.00 feet;
- North 04°25'13" West, 125.32 feet;
- North 25°36'23" East, 28.93 feet;
- North 64°57'42" East, 400.39 feet to the westerly line of Monarch Bay Drive, said point being also the beginning of a non-tangent curve, concave Southeasterly, having a radius of 436.23 feet, with a radial line that bears North 69°54'00" West;

Thence along said westerly line of Monarch Bay Drive, northeasterly along said curve, through a central angle of 09°00'38", for an arc length of 68.60 feet to a point on the southeasterly line of Marina Boulevard (formerly West Avenue) being 60.00 feet in width;

Thence leaving said westerly line of Monarch Bay Drive, along said southeasterly line of Marina Boulevard, South 62°30'00" West, 206.35 feet to the westerly line of Block Z, as said Block is shown on that certain Map entitled "Mulford Gardens Addition", filed for record on February 1, 1928 in Book 7 of Maps at Page 55, Records of Alameda County;

Thence along said westerly line of Block Z of said Map of "Mulford Gardens Addition", the following courses and distances:

- North 11°00'00" West, 31.29 feet;
- North 09°47'00" West, 13.50 feet;

Thence leaving said westerly line of Block Z, the following courses and distances:

- South 62°30'00" West, 248.54 feet to the beginning of a curve to the right, having a radius of 50.00 feet;
- Westerly along said curve, through a central angle of 35°09'59", for an arc length of 30.69 feet to the beginning of a reverse curve, concave to the Southeast, having a radius of 50.00 feet;
- Southwesterly along said curve through a central angle of 120°37'39", for an arc length of 105.27 feet;
- South 22°57'40" East, 34.26 feet to the beginning of a curve to the right, having a radius of 50.00 feet;
- Southerly along said curve, through a central angle of 18°34'36", for an arc length of 16.21 feet;
- South 04°23'04" East, 96.32 feet to the beginning of a curve to the right, having a radius of 30.00 feet;
- Southerly along said curve, through a central angle of 16°21'24", for an arc length of 8.56 feet;
- South 11°58'20" West, 87.53 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Southerly along said curve, through a central angle of 16°21'24", for an arc length of 8.56 feet;
- South 04°23'04" East, 101.88 feet to the beginning of a curve to the right, having a radius of 120.00 feet;
- Southwesterly along said curve, through a central angle of 89°18'57", for an arc length of 187.06 feet;
- South 84°55'53" West, 661.73 feet to the beginning of a curve to the left, having a radius of 200.00 feet;
- Southwesterly along said curve, through a central angle of 83°50'08", for an arc length of 292.64 feet;
- South 01°05'45" West, 921.33 feet to the beginning of a curve to the left, having a radius of 100.00 feet;
- Southerly along said curve, through a central angle of 45°44'08", for an arc length of 79.82 feet;
- South 44°38'23" East, 340.96 feet to the beginning of a curve to the left, having a radius of 40.00 feet;
- Easterly along said curve, through a central angle of 70°46'07", for an arc length of 49.41 feet;
- North 64°35'30" East, 37.82 feet to the beginning of a curve to the left, having a radius of 40.00 feet;
- Northeasterly along said curve, through a central angle of 66°04'23", for an arc length of 46.13 feet;
- North 01°28'52" West, 77.80 feet;

- North 71°55'51" East, 332.76 feet to the beginning of a curve to the right, having a radius of 30.00 feet;
- Easterly along said curve, through a central angle of 34°47'02", for an arc length of 18.21 feet;
- South 73°17'07" East, 73.46 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Easterly along said curve, through a central angle of 30°51'56", for an arc length of 16.16 feet;
- North 75°50'57" East, 87.12 feet;
- North 31°35'14" East, 14.74 feet;
- South 58°24'46" East, 90.02 feet;
- North 31°35'14" East, 50.00 feet;
- North 58°24'46" West, 90.83 feet;
- North 31°35'14" East, 17.32 feet;
- North 71°05'22" East, 456.17 feet;
- North 29°07'04" West, 138.87 feet;
- North 72°26'34" East, 239.33 feet;
- South 72°26'52" East, 53.79 feet to the Point of **BEGINNING**.

Containing 1,875,754 square feet or 43.061 acres, more or less.

Excepting therefrom Parcel F, herein above described, more particularly described as follows:

Being all of Parcel 3, as said Parcel is shown on Parcel Map No. 6768, filed May 15, 1996 in Book 223 of Maps at Pages 50 through 53 inclusive, Records of Alameda County, and further described as follows:

BEGINNING at the most northerly corner of said Parcel 3 (233 M 50-53);

Thence leaving said corner and along the easterly line of said Parcel 3, South 09°00'05" East, 149.74 feet to the southerly line of said Parcel 3;

Thence along said southerly lines of said Parcel 3, the following courses and distances:

- South 80°59'55" West, 38.00 feet;
- South 09°00'05" East, 21.80 feet;
- South 80°59'55" West, 57.00 feet to the westerly line of said Parcel 3;

Thence along said westerly line, North 09°00'05" West, 171.54 feet to the northerly line of said Parcel 3;

Thence along said northerly line, North 80°59'55" East, 95.00 feet to the Point of **BEGINNING**.

EXHIBIT I

SCOPE OF DEVELOPMENT

For the purposes of this agreement, the following definitions shall apply:

Horizontal Improvements: Improvements to the underlying land and infrastructure before the Vertical Improvements can be realized. This includes flood plain and sea level rise mitigation, geotechnical mitigation, grading and installation of onsite and offsite utilities, including, but not limited to sanitary sewer, storm drain, water, natural gas, electricity and fiber optic internet service.

Vertical Improvements: Construction of buildings, structures (including foundations), landscaping, lighting, streets, sidewalks, curb and gutter, parking areas, and other improvements to be constructed or installed on or in connection with the development of the Project.

1. Single Family Housing Element

- a) Design and construct approximately between 200 and 215 detached and attached single-family homes and attached townhomes that include affordable units in accordance with the requirements of the City's inclusionary housing ordinance as specified in the DDA.
- b) The Single-Family Element shall include, but is not limited to, construction of streets, sidewalks, landscaping, lighting and all onsite and offsite utilities, including but not limited to sanitary sewer, storm drain, water, natural gas, electricity and fiber optic internet service to all units, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City.
- c) All single-family homes and townhomes shall meet or exceed CA Title 24 requirements and be EnergyStar Rated.
- d) Outdoor landscaping on the Single-Family Element shall utilize tertiary treated recycled water (grey water) from the San Leandro Water Pollution Control Plant, subject to availability and final City approval.
- e) Developer shall perform all of the mitigation measures adopted by the City with respect to the impacts of the project of the Agreement, including design of structures to be 15 percent more energy efficient than the current Building and Energy Standards (Title 24, Part 6m of the California Building Code).

2. Golf-Course Element

- a) Redesign and reconstruct a nine-hole links style golf course ("Golf Course Parcel").
- b) The Golf Course Parcel shall be stripped of existing improvements and landscaping, then graded and improved to create a new golf course.
- c) The existing north lake shall be reconfigured, mature trees (where feasible and appropriate), and the monarch butterfly roosting habitat shall remain.

- d) Per Mitigation Measure BIO-1A in the San Leandro Shoreline Development Final EIR, a Monarch Butterfly Roosting Habitat Protection Program (MBRHPP) shall be prepared by a qualified biologist and ensure adequate avoidance and protection of the winter roosting colony, consistent with the intent of Section 4-1-1000, Interference with Monarch Butterflies Prohibited, of the San Leandro Municipal Code.
- e) Improvements shall include a new irrigation system, stormwater management and drainage features, landscaping, concrete paths, and a protection fence for the residential neighborhood to the east as well as a new attendant shack and restroom.
- f) A golf cart path shall connect the new entrance with the existing crosswalk on Fairway Drive, in a location approved by the City.
- g) The existing maintenance yard and building shall remain, subject to any changes by the City as a part of the construction of the new Mulford-Marina Library.
- h) The existing water pipe connecting the north lake to the 18 hole golf course to the south of Fairway Drive shall remain.
- i) Any changes to existing infrastructure, including water features, are subject to review and approval of the Public Works and Engineering & Transportation Departments.
- j) The public improvements related to the Golf Course Element shall be subject to a Public Improvement Agreement.
- k) Developer shall be responsible for and pay for the design of the Golf Course Element. The design work shall be completed by a consultant approved by the City, with input from applicable community groups.
- l) The final design for the Golf Course Element is subject to review and approval in writing by the City Manager in consultation with the Directors of the Public Works and Engineering & Transportation Departments, respectively.

3. Developer Hotel Element

- a) Developer shall design and construct on the Developer Hotel Parcel a First Class Hotel that has between 200 and 220 rooms.
- b) The Developer Hotel Element may consist of two distinct hotels which share common facilities such as a lobby.
- c) The Hotel Parcel shall include publicly accessible outdoor space, parking, lighting, landscaping, ancillary food and beverage amenities and all site utilities, all in conformance with the City Building and Zoning codes, and pursuant to plans to be approved by the City.
- d) Parking for the Developer Hotel Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code or as otherwise approved by the City.
- e) Developer agrees that an easement shall be recorded on the Developer Hotel Parcel allowing the public to use certain designated parking spaces located adjacent to the Park Parcel, with rights of ingress and egress thereto. The days and hours of public

use of such designated parking spaces shall be as determined by the mutual agreement of City and Developer.

- f) Developer further agrees that an easement shall be recorded on the Developer Hotel Parcel allowing users of the Developer Restaurant Element (parcel J) and the Market Element (parcel K) to utilize parking on the Developer Hotel Parcel and to provide for joint access between the parcels.
- g) The Developer Hotel Element shall include a full-service restaurant of approximately 5,000 square-foot, which the Developer or Developer Hotel Ground Lease Subtenant may sublease to an independent third-party operator, subject to the prior approval of the City and the requirements of the Developer Hotel Ground Lease.

4. Multifamily Element

- a) Developer shall design and construct a multifamily residential development with approximately two hundred eighty-five (285) rental units (“Multifamily Element”).
- b) The Multifamily Element shall include parking, landscaping, lighting and all onsite and offsite utilities, including but not limited to fiber optic internet service to all units, all in conformance with the City Building and Zoning codes, and pursuant to plans to be approved by the City.
- c) Parking for the Multifamily Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code or as otherwise approved by the City.
- d) The unit mix and any amenities are subject to the Project Approvals, as defined in Section 2.1 of the Agreement.
- e) The Multifamily Element shall meet the objectives of the City’s Inclusionary Housing Ordinance (San Leandro Zoning Code section 6-3000 *et seq.*) by paying a fee in-lieu of providing affordable rental units (the “Affordable Rental Housing In-Lieu Fee”). If Developer elects not to pay the Affordable Rental Housing In-Lieu Fee, the size and income distribution of the affordable rental units shall be subject to the requirements of the Inclusionary Housing Ordinance.

5. Developer Restaurant Element

- a) Developer shall design and construct (or cause to be designed and constructed) a two-story building shell in which an approximately 7,500 square foot full-service restaurant shall be located on the first floor and an approximately 7,500 square foot banquet facility shall be located on the second floor (“Developer Restaurant Element”).
- b) Developer shall provide for the Developer Restaurant Ground Lease Subtenant or the operator of the Restaurant to construct the tenant improvements for the Restaurant, or Developer shall construct the tenant improvements itself.
- c) The Developer Restaurant Element shall include parking, lighting, landscaping and all site utilities, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City. Parking for the Developer Restaurant

Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code, or as otherwise approved by the City.

6. Market Element

- a) Developer shall construct an approximately 3,000 square foot single-story free-standing building shell (the “Market”).
- b) The Market Element shall include lighting, landscaping and all site utilities, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City.
- c) A food market, bait shop, and/or other retail or service business shall be located in the Market, with the specific use to be approved by the City in its reasonable discretion.
- d) The Market building shall share parking with the Developer Hotel Element and be located at the southeast corner of the Developer Hotel Element parking lot at Monarch Bay Drive and Mulford Point Drive.

7. Park Element

- a) City shall be responsible for the design and construction of Monarch Bay Park, to be located on the peninsula portion of the Property, as described and depicted in Exhibit H, (the “Park Parcel”).
- b) The Park Element shall consist of pedestrian paths, plazas, landscaping, irrigation, restrooms, boat launch, sitting areas, parking, public art and sections of the San Francisco Bay Trail, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City.
- c) The trail design shall conform to the San Francisco Bay Trail Design Guidelines and Toolkit, dated June 2016, as it may be amended.
- d) Developer shall deposit soil on the Park Parcel in accordance with each of the requirements of Section 2.7 hereof, including the parties’ execution of a right of entry agreement which protects City from defects in the condition of the deposited soil and provides for the stabilization of the soil deposited on the Park Parcel.
- e) The City’s obligation for the Park Element is expressly made contingent upon the close of escrow for the Single Family Parcel.
- f) The City intends to obtain some or all of the funding for the Park design and construction from the proceeds of the sale of the Single Family Parcel to Developer, and the Park Development Impact Fee payable by Developer to City in connection with the Single Family Element. The City may also use all or a portion of the deposit made by Developer pursuant to the Single Family Purchase and Sale Agreement for the costs of the design of the Park, subject to the terms and conditions set forth in the Single Family Purchase and Sale Agreement.
- g) Such design work shall be completed by an architect and/or consultant selected by the City in its sole discretion, and may be performed as part of a design-build contract as determined by the City in its sole discretion.

- h) The final design for the Park Element shall be approved by the City in its sole discretion and approved by the San Francisco Bay Conservation and Development Commission (“BCDC”).

8. Harbor Element

- a) The City shall perform demolition at the San Leandro Marina Harbor adjacent to the Property in order to make a clean, aesthetically appropriate and environmentally sound harbor, in conformance with plans approved by the City, the San Francisco Bay Conservation and Development Commission (BCDC) and other applicable agencies.

9. Library Element

- a) The City shall demolish and reconstruct the Mulford-Marina Branch Library.

10. Developer Responsibilities

- a) The Developer shall be responsible, at its sole expense, for the installation and/or coordination of all site preparation required for the development of the following Project Elements: Single Family Housing, Golf Course, Developer Hotel, Multifamily, Developer Restaurant, and Market. Such site preparation, whether within the Project, off-site or in the public right-of-way shall include, but is not limited to, the following: demolition of existing paving, buildings, and other improvements, tree removal, flood plain and sea level rise mitigation, geotechnical mitigation, and rough grading.
- b) In accordance with Section 1.4.10 and Exhibit R, Developer shall deposit soil on the Park Parcel in accordance with City-approved plans. Developer’s deposit of soil on the Park Parcel shall be in accordance with each of the requirements of Section 2.7 hereof, including the parties’ execution of a right of entry agreement which protects City from defects in the condition of the deposited soil and provides for the stabilization of the soil deposited on the Park Parcel.
- c) Developer shall perform demolition, rough grading, and provide clean fill, as a part of site preparation (including sea level rise mitigation), and install surface improvements for the portions of the publicly accessible Bay Trail path located adjacent to the Developer Hotel Parcel and Multifamily Parcel, as shown in Exhibit R. In accordance with Municipal Code, Chapter 7-13, a credit against the applicable Park Facilities Development Impact Fee, in an amount equal to the cost of the such public facility, shall be provided by the City.
- f) The Developer is responsible for design and reconstruction of the portions of Mulford Point and Pescador Point Drives, which are adjacent to the Developer Hotel Element (Parcel J) and Multifamily Element (Parcel I), as shown in Exhibit R. Such improvements shall include, but are not limited to sidewalks, new curb-to-curb pavement, striping, new signage, landscaping, irrigation, new and/or modified utilities, undergrounding of overhead utilities, lighting, and pedestrian amenities, subject to final review and approval by the City Engineering and Transportation Director.
- g) The Developer is responsible for design and reconstruction of portions of Mulford Point Drive located to the west of the Developer Hotel Element (Parcel J) and the Developer Restaurant Element (Parcel K), as well as the associated Park Element parking lot, as

shown in Exhibit R. Such roadway improvements shall include, but are not limited to, sidewalks, new pavement, striping, new signage, landscaping, irrigation, new and/or modified utilities, undergrounding of overhead utilities, lighting, and pedestrian amenities, subject to final review and approval by the City Engineering and Transportation Director. A credit against the applicable Park Facilities Development Impact Fee, in an amount equal to half (50%) of the cost of any required improvements to portions of Mulford Point Road and the shared Park Element parking lot, located west of Parcels J and K, shall be provided by the City.

EXHIBIT J

SCHEDULE OF PERFORMANCE

Task	Time for Performance
1. Entire Project	
Planning entitlements and vesting tentative map for Project	Within 12 months of the Agreement Date, entitlements and tentative map applications are complete and public hearing is held (Entitlement Date)
Development Agreement for the Project	Within 12 months of the Agreement Date, agreement is prepared and public hearing is held
Submittal of application for City permits for Horizontal Improvements for at least one project Element (demolition, encroachment, or grading)	Within 12 months of Entitlement Date
2. Single Family Element	
Effective Date	_____, 2020
Opening of Escrow	Within 5 business days from expiration of appeals periods for the General Plan Text Amendment, General Plan Map Amendment, Zoning Map Amendment, and Addendum to the Shoreline Project EIR
Deposit due	Within 3 business days from Opening of Escrow
Escrow Holder delivers a Preliminary Title Report for the Property	Within 3 business days from Opening of Escrow
Due Diligence Contingency Date	90 days from Effective Date
Entitlements Contingency Date	270 days from Effective Date (subject to one 90 day extension)
Buyer and City enter into Public Improvement Agreement for Single Family Element, and Buyer submits required security to City	Prior to Close of Escrow

Close of escrow for Single Family parcel occurs.	Within 90 days after first to occur of (a) receipt of Government Entitlements, (subject to one 90 day extension) or (b) December 31, 2021
Commencement of construction of Horizontal Improvements for Single-Family Element	Within 90 days of receipt of City approval of first permit for Horizontal Improvements (demolition, encroachment or grading), permit is issued and work begins
Completion of construction of Horizontal Improvements for Single-Family Element	Within 24 months of commencement of construction of Horizontal Improvements, work under demolition, encroachment and grading permits is given final approval
Submittal of Building Permit applications for Vertical Construction for Single-Family Element	Prior to Close of Escrow
3. Golf Course Element	
Submit Golf Course Implementation Plan to City	90 days from Opening of Escrow, or after termination of lease with the American Golf Corporation for that portion of land to be utilized for the Single-Family Element, whichever comes later
Developer and City enter Public Improvement Agreement for Golf Course Element, and Developer submits required security to City	Prior to Close of Escrow for sale of Single Family Element to Developer
Commencement of construction of Golf Course Element	Within 90 days after receipt of City approval of first permit for Golf Course Element (demolition, encroachment and/or grading), permit is issued and work begins under such permit
Substantial completion of construction of Golf Course Element.	Within 30 months after commencement of construction of Golf Course Element, all major construction is complete and only minor work and/or maturation of landscaping remains, as accepted by the Directors of Engineering and Transportation and Public Works

Developer may sell more than 132 completed residential units within the Single Family Element.	Upon substantial completion of the Golf Course Element.
4. Developer Hotel Element	
All conditions precedent to commencement of Developer Hotel Ground Lease are satisfied or waived by the parties.	By December 31, 2022
Effective Date - Execution and commencement of Developer Hotel Ground Lease occurs.	Within 30 days of satisfaction (and/or waiver) of conditions precedent for Developer Hotel Lease
Approval of permits for Horizontal Improvements for the Developer Hotel Element (including grading, encroachment and demolition)	Prior to Effective Date of Developer Hotel Lease
Commencement of construction of Horizontal Improvements for the Developer Hotel Element	Within 90 days of Effective Date of Developer Hotel Lease, first demolition, encroachment or grading permit is issued and work begins
Completion of construction of Horizontal Improvements for Developer Hotel Element	Within 18 months of commencement of construction of Horizontal Improvements for Developer Hotel, work under demolition, encroachment and grading permits is given final approval
Commencement of construction of Vertical Improvements for Developer Hotel Element	Within 90 days of approval of first Building Permit for Vertical Improvements for Developer Hotel, permit is issued and work begins
Completion of construction of Vertical Improvements and receipt of Temporary Certificate of Occupancy (TCO) for the Developer Hotel.	Within 33 months after approval of first Building Permit for Vertical Improvements for Developer Hotel, TCO is received
Developer Hotel opens for business to the public	Within 60 days after receipt of TCO for Developer Hotel
Rent commencement Date occurs	The earlier to occur of (a) 90 days after receipt of TCO, or (b) 33 months after

	approval of first Building Permit for Vertical Improvements for Developer Hotel
5. Multifamily Element	
All conditions precedent to commencement of Multifamily Lease are satisfied or waived by the parties.	By December 31, 2022
Effective Date - Execution and commencement of Multifamily Lease occurs.	Within 30 days of satisfaction (and/or waiver) of conditions precedent for Multifamily Lease
Approval of permits for Horizontal Improvements for the Multifamily Element (including grading, encroachment and demolition)	Prior to Effective Date of Multifamily Lease
Commencement of construction of Horizontal Improvements for the Multifamily Element	Within 90 days of Effective Date of Multifamily Lease, first demolition, encroachment or grading permit is issued and work begins
Completion of construction of Horizontal Improvements for Multifamily Element	Within 18 months of commencement of construction of Horizontal Improvements for Multifamily Element, work under demolition, encroachment and grading permits is given final approval
Commencement of construction of Vertical Improvements for Multifamily Element	Within 90 days of approval of first Building Permit for Vertical Improvements for Multifamily Element, permit is issued and work begins
Completion of construction of Vertical Improvements and receipt of Temporary Certificate of Occupancy (TCO) for Multifamily Element	Within 33 months after approval of first Building Permit for Vertical Improvements for Multifamily Element, TCO is received
Rent commencement Date occurs	The earlier to occur of (a) 90 days after receipt of TCO, or (b) 33 months after approval of first Building Permit for Vertical Improvements for Multifamily Element
6. Developer Restaurant Element	

All conditions precedent to commencement of Developer Restaurant Lease are satisfied or waived by the parties.	By December 31, 2022
Effective Date - Execution and commencement of Developer Restaurant Lease occurs.	Within 30 days of satisfaction (and/or waiver) of conditions precedent for Developer Restaurant Lease
Approval of permits for Horizontal Improvements for the Developer Restaurant Element (including grading, encroachment and demolition)	Prior to Effective Date of Developer Restaurant Lease
Commencement of construction of Horizontal Improvements for the Developer Restaurant Element	Within 90 days of Effective Date of Developer Restaurant Lease, first demolition, encroachment or grading permit is issued and work begins
Completion of construction of Horizontal Improvements for Developer Restaurant Element	Within 18 months of commencement of construction of Horizontal Improvements for Developer Restaurant Element, work under demolition, encroachment and grading permits is given final approval
Commencement of construction of Vertical Improvements for Developer Restaurant Element	Within 90 days of approval of first Building Permit for Vertical Improvements for Developer Restaurant Element, permit is issued and work begins
Completion of construction of Vertical Improvements and receipt of Temporary Certificate of Occupancy (TCO) for Developer Restaurant Element	Within 24 months after approval of first Building Permit for Vertical Improvements for Developer Restaurant Element, TCO is received
Rent commencement Date occurs	The earlier to occur of (a) 90 days after receipt of TCO, or (b) 24 months after approval of first Building Permit for Vertical Improvements for Developer Restaurant Element
7. Market Element	
All conditions precedent to commencement of Market Lease are satisfied or waived by the parties.	By December 31, 2022

Effective Date - Execution and commencement of Market Lease occurs.	Within 30 days of satisfaction (and/or waiver) of conditions precedent for Market Lease
Approval of permits for Horizontal Improvements for the Market Element (including grading, encroachment and demolition)	Prior to Effective Date of Market Lease
Commencement of construction of Horizontal Improvements for the Market Element	Within 90 days of Effective Date of Market Lease, first demolition, encroachment or grading permit is issued and work begins
Completion of construction of Horizontal Improvements for Market Element	Within 18 months of commencement of construction of Horizontal Improvements for Market Element, work under demolition, encroachment and grading permits is given final approval
Commencement of construction of Vertical Improvements for Market Element	Within 90 days of approval of first Building Permit for Vertical Improvements for Market Element , permit is issued and work begins
Completion of construction of Vertical Improvements and receipt of Temporary Certificate of Occupancy (TCO) for Market Element	Within 18 months after approval of first Building Permit for Vertical Improvements for Market Element, TCO is received
Rent commencement Date occurs	The earlier to occur of (a) 90 days after receipt of TCO, or (b) 18 months after approval of first Building Permit for Vertical Improvements for Market Element

It is expressly understood and agreed by the Parties that the foregoing schedule of performance is subject to all of the terms and conditions set forth in the text of the Development Agreement including, without limitation, extension due to Force Majeure. Times of performance under the Development Agreement may be extended by request of any Party memorialized by a mutual written agreement between the Parties, which agreement may be granted or denied in the non-requesting Party’s sole and absolute discretion (subject to events of force majeure set forth in the Development Agreement).

EXHIBIT K

City Environmental Disclosure

City has provided the following documents to Developer:

1. **Phase I Environmental Site Assessment, San Leandro Shoreline Redevelopment, San Leandro, California**, prepared by ENGEO, March 2, 2017, addressed to Cal-Coast Companies, LLC (“Phase I Report”)

a. The Phase I Report identified the following historical Recognized Environmental Conditions for the Property:

- In 1991, the City excavated impacted soil from the drum storage area where a spillage had occurred, and the excavated soil was deposited offsite. Confirmation sampling indicated that all impacted soil had been removed. A no further action letter was issued by the Alameda County Health Care Services Agency on October 27, 1995.
- Three underground storage tanks were removed from the Property in April 2016 under permit from the City’s Environmental Services Division.

b. The Phase I Report identified the following potential Recognized Environmental Conditions for the Property:

- The golf course was constructed in 1967. Agricultural chemicals, some persistent in the environment, may have been used during the maintenance of the golf course.
- Due to the past and current use of the Property as a marina, it is possible that the soil or groundwater may be potentially impacted.

c. The Phase I Report identified the following features of potential environmental concern:

- If Bay sediments are to be disturbed during construction activities, historically high metal levels in sediment should be taken into consideration if materials are to be disturbed.

d. The Phase I Report makes the following recommendations:

- A Phase II environmental site assessment should be conducted to evaluate potential impacts to the surface and subsurface due to potential use of pesticides on the current golf course, and to evaluate potential impacts to soil and groundwater at the Property due to its past and current use as a marina.

- Given the age of structures on the Property, it is possible that asbestos-containing materials or lead-based paints are present within the structure. If the structure will be demolished, an environmental professional should be retained to determine if asbestos-containing materials or lead-based paints are present within the structures.
- A soil management plan should be prepared and implemented as a contingency if unknown environmental issues are encountered during construction.

e. The Phase 1 report lists a number of facilities located within appropriate ASTM search distances which could be associated with hazardous materials releases, including Ruan Transportation, Major Salvage Co., East Bay Leasing Corporation, Associated Aerospace Activities, Former Airgas Facility, Latchford Glass, Owens-Corning, Parts Distribution Services, Inc., US Ink, Sun Chemical Corp US Ink Division, Adohr Farms, Lincoln Properties, San Leandro City Hall, San Leandro Marina, H Dump Station, Shore Line Maintenance, and Tony Lema Golf Course.

f. The Phase I Report lists facilities and properties within and near the Property which are associated with hazardous materials releases, including:

- 40 San Leandro Marina, UST site, cleanup conducted in 1995. The HAZNET listing for the Property is associated with the disposal of unspecified organic liquid mixture (2001), unspecified oil containing waste (2007 and 2009), unreported waste (2013), and waste oil and mixed oil (2005). The SWEEPS UST listing is associated with four 4,000 gallon motor vehicle fuel tanks (status unknown), a 6,000 gallon diesel tank (status unknown), and four active diesel and gasoline tanks.
- Chevron, 13700 Doolittle Drive, closed leaking underground storage tank site. Soil is listed as the potential media affected and motor oil/waste oil is listed as the potential contaminant of concern. This site has been closed since October 1995.
- Four Seasons Cleaners, 13778 Doolittle Drive, open assessment cleanup program site, six USTs were removed from the site in 1992 and the site was closed in June 1993. Tetrachloroethylene (PCE) was previously detected in soil gas and groundwater at this site. Prior to 2001, the dry cleaning operation utilized PCE as a cleaning agent.
- Don Elgie property, 14100 Doolittle Drive, closed LUST site. Other groundwater (uses other than drinking water) is listed as the potential media affected, and gasoline is listed as the potential contaminant of concern. The site has been closed since March 1995.

g. The Phase I Report describes files from the City's Environmental Services Division indicating the following, which may be associated with releases of hazardous materials:

In May 1989, spillage was discovered around the waste oil drum storage area at the San Leandro Marine Center. In 1991, the impacted soil was excavated and disposed offsite. Confirmation sampling indicated that all impacted soil had been removed.

2. Phase II Environmental Site Assessment, San Leandro Shoreline Redevelopment, San Leandro, California, prepared by ENGEO, March 2, 2017 (“Phase II Report”)

a. The Phase II Report identified the following soils test results with respect to the Marina portion of the Property:

(i) No detectable concentrations of TPH-g or VOCs were reported for the 30 discrete soil samples.

(ii) Detectable concentrations of TPH-d, ranging from 2.34 to 31.8 mg/kg, were reported for six of the 3-point vertical composite samples. TPH-mo concentrations ranging from 10.3 to 156 mg/kg were reported for eight of the 3-point vertical composite samples. However, reported TPH-d and TPH-mo concentrations were below respective RSLs.

(iii) Several metallic analytes were detected in the 3-point vertical composite samples. However, with the exception of arsenic, all of the reported concentrations were below established residential soil screening levels. Composite sample S13 exhibited an arsenic concentration of 13.5 mg/kg, which slightly exceeds the expected background concentration for the region. The reported concentrations of arsenic in the other nine composite samples ranged from 3.12 to 10.6, which are within the range of expected background concentrations for the region.

(iv) Composite sample S14 exhibited detectable concentrations of DDE and DDD (38.9 and 6.68 µg/kg, respectively). The reported concentrations of DDE and DDD were below corresponding residential RSLs.

(v) Detectable concentrations of SVOCs were reported for composite sample S14 (phenanthrene, fluoranthene, and pyrene) and S16 (benzyl butyl phthalate). The reported concentrations of SVOCs were below RSLs for residential soil.

(vi) A summary of the soil sample analytical results is presented in Table A of the Phase II Report. The laboratory results are presented in their entirety in Appendix A to the Phase II Report.

b. The Phase II Report identified the following groundwater test results with respect to the Marina portion of the Property:

(i) Laboratory testing of the groundwater samples exhibited detectable concentrations of o-xylene and methyl tert-butyl ether (MTBE). Reported concentrations were below the drinking water Maximum Contaminant Levels (MCLs) established by the San Francisco Regional Water Quality Control Board (RWQCB).

(ii) Several metallic analytes were detected in the groundwater samples. All concentrations were below the associated drinking water MCL, with the exception of the following:

Sample GW-5 exhibited a cobalt concentration of 0.013 milligrams per liter (mg/L), and a selenium concentration of 0.06 mg/L. The reported concentrations of cobalt and selenium slightly exceed the established MCLs for drinking water of 0.006 mg/L and 0.05 mg/L, respectively.

(iii) TPH-d and TPH-mo were not detected in any of the groundwater samples collected from the Property. TPH-g was detected at 65.5 mg/L in sample GW-2. The reported concentration of TPH-g was below the corresponding MCL.

(iv) A summary of the groundwater sample analysis is presented in Table B of the Phase II Report. The laboratory analytical reports are presented in their entirety in Appendix A to the Phase II Report.

c. The Phase II Report identified the following near-surface soils test results with respect to the Golf Course portion of the Property:

(i) Review of the laboratory test results found detectable concentrations of OCPs, lead, and/or arsenic in the near-surface soil samples.

(ii) Reported concentrations of DDE ranged from 3.58 to 6.73 micrograms per kilogram ($\mu\text{g}/\text{kg}$) in the composite samples, with no detectable concentrations of DDE reported for samples S2(A-D) and S3(A-D). DDT Concentrations of 8.04 $\mu\text{g}/\text{kg}$ and 7.26 $\mu\text{g}/\text{kg}$ were reported for samples S1(A-D) and S7(A-D), respectively. Samples S1(A-D), S2(A-D), and S7(A-D) exhibited detectable concentrations of dieldrin (1.7 $\mu\text{g}/\text{kg}$, 1.61 $\mu\text{g}/\text{kg}$, and 4.1 $\mu\text{g}/\text{kg}$, respectively). The reported concentrations for all OCPs were below the corresponding USEPA Region 9 Regional Screening Levels for residential soil (RSLs).

(iii) Arsenic was detected in all seven of the discrete samples analyzed. Reported concentrations of arsenic ranged from 2.01 and 5.18 milligrams per kilogram (mg/kg), which is within the range of expected background concentrations for the San Francisco Bay Area region. Detectable concentrations of lead were reported for all samples analyzed, with the exception of sample S2-B. Reported lead concentrations ranged from 11.9 to 40.9 mg/kg. The reported concentrations of lead were below the respective RSL.

(iv) A summary of the soil sample analytical results is presented in Table C to the Phase II Report. The laboratory results are presented in their entirety in Appendix A to the Phase II Report.

d. The Summary and Conclusion of the Phase II Report states as follows:

(i) Review of the laboratory test results found detectable concentrations of OCPs, metals, and petroleum hydrocarbons in soil samples collected from the marina portion of

the Property. Reported concentrations of all analytes were below their corresponding USEPA RSL or expected background concentrations, with the exception of arsenic. Elevated concentrations of arsenic were only observed in the composite sample recovered from location S13, in the northeast portion of the Property. The laboratory was instructed to run the composite sample exhibiting elevated concentrations of arsenic on a discrete basis; discrete samples S-13@2', S-13@5' and S-13@10' reported arsenic concentrations below the respective USEPA RSL. Detectable concentrations of OCPs, arsenic, and lead were reported for the near-surface soil samples collected throughout the golf course portion of the Property. Reported concentrations of all analytes were below their corresponding USEPA's RSLs or expected background concentrations.

(ii) Laboratory testing of the groundwater samples exhibited detectable concentrations of TPH-g, o-xylene, MTBE, cobalt, and selenium at the Property. With the exception of the cobalt and selenium, the reported concentrations of all analytes were below their respective MCL established by the RWQCB. Since there is no current or historic source of cobalt or selenium on the Property and groundwater is not a drinking water source at the Property, the report believes this is not a concern for the proposed redevelopment.

(iii) Given the past/current uses of the Property, it is possible that small areas with potentially impacted soil could be encountered during future site development activities. If encountered, these materials should be handled in an appropriate manner under the observation of an environmental professional. The report recommends the preparation of a Soil Management Plan (SMP) to outline procedures and protocols for handling potentially impacted soil.

EXHIBIT L

SINGLE FAMILY PURCHASE AND SALE AGREEMENT

EXHIBIT M

DEVELOPER HOTEL GROUND LEASE

EXHIBIT N

MULTIFAMILY GROUND LEASE

EXHIBIT O

DEVELOPER RESTAURANT GROUND LEASE

EXHIBIT P

MARKET GROUND LEASE

EXHIBIT Q

PUBLIC IMPROVEMENT AGREEMENT

CITY OF SAN LEANDRO

STANDARD PUBLIC IMPROVEMENT AGREEMENT



THIS AGREEMENT, entered into on _____, by and between the CITY OF SAN LEANDRO, a municipal corporation of the State of California, hereinafter referred to as "City," and [Applicant Name] hereinafter referred to as "Owner."

In consideration of the granting of certain entitlement of use described as follows: [Planning Permit Application Reference] at [Address], San Leandro, California, Assessor's Parcel No. [APN No.], hereinafter referred to as "Project."

It is mutually agreed as follows:

AGREEMENTS

1. Performance of Work. Owner agrees to furnish, construct, and install at his own expense all required public improvements as shown on the plans prepared by [Applicant's Consultant Name] and identified as [Description of Improvement Plans], a copy of which is on file in the Office of the City Engineer and is incorporated herein by reference and all other improvements required by the City Engineer based upon the standards imposed by Title VII, Chapter 8 of the San Leandro Municipal Code of 1985 and the Standard Specifications adopted by the City of San Leandro for public works. Owner's costs shall include all necessary relocation of existing utilities. The total project costs are estimated according to the approved Engineer's Estimate attached hereto and made a part hereof.

2. Work; Satisfaction of City Engineer. All of the work on the required improvements is to be done at the places, with the materials, in the manner, and at the grades, all as shown upon the approved plans and specifications, and to the reasonable satisfaction of the City Engineer.

3. Work; Inspections; Fees. The City Engineer or his designee shall inspect all of the improvements made pursuant hereto to determine that they comply with all City regulations. Concurrently

with the execution of this agreement, the Owner shall deposit with the City the sum of [REDACTED] DOLLARS (\$ [REDACTED]) to cover the cost of design review and inspection of the improvements. Owner hereby agrees to increase the amount of the deposit to pay City the actual cost of inspection if such costs should exceed the original deposit.

4. Modification for Unforeseeable Circumstances. Owner reserves the right to modify said plans and specifications as the development progresses should unforeseen conditions occur, providing written approval is first obtained from the City Engineer. The City shall bear no responsibility whatsoever for work performed and rejected by the City Engineer. City reserves the right to make reasonable modifications to the plans and specifications whenever field conditions and/or public safety require such modifications. Owner shall pay City for all costs incurred in plan checking and inspection resulting from said modifications.

5. Work; Time for Commencement and Performance. City hereby fixes the time for the commencement of the required work to be on or before the [REDACTED] day of [REDACTED], and for its completion to be on the [REDACTED] day of [generally allow for one-year unless the project is large or multi-phase]. At least 15 calendar days prior to the commencement of work hereunder, Owner shall notify the City Engineer in writing of the date fixed by Owner for commencement thereof, in order that the City Engineer shall be able to provide services for inspection.

6. Location of Construction Yard. Owner agrees to locate any construction yard for the storage of equipment, vehicles, supplies and materials, or the preparation or fabrication thereof, to be used in connection with the installation of improvements for said project or the construction of buildings therein, in such a manner so as to cause a minimum of inconvenience to persons living in the areas immediately adjacent to said project, including installation of appropriate fencing and screening, and to obtain the approval of the City Engineer as to the proposed location and standards of maintenance of the yard. Immediately upon completion of the improvements to be constructed to which this agreement refers, Owner agrees to cease using the construction yard, clear the site and restore it to its original condition, and to remove therefrom all supplies, materials, equipment, or vehicles being stored or kept thereon. Owner agrees not to use the construction yard in connection with the installation of improvements or construction of buildings elsewhere. City may extend

the time within which the construction yard may be used or within which supplies, materials, equipment or vehicles may be stored or kept thereon if City shall determine that the granting of such extension will not be detrimental to the public welfare. No extension will be made except on the basis of a written application made by Owner to the City Engineer stating fully the grounds and facts relied upon for such extension.

7. Rights-of-Way Free From Obstruction. Owner agrees to keep and maintain all areas within the improved or partially improved public streets or public rights-of-way contiguous and adjacent to and within the hereinabove referred to Property, including streets being constructed and/or improved pursuant to this agreement, free and clear of all building materials, dirt, mud, sand, gravel, rocks, bricks, stones, shingles, roofing material, lumber, tool sheds, construction buildings and other similar items at all times during the improvement and construction of the improvement and all buildings and other structures within said project.

8. Extension. The dates for commencement and completion of the work of construction may be extended as herein provided. The City Engineer shall extend said dates for delays in said work actually caused by riots, strikes, lockouts, fires, earthquakes, flood and conditions resulting therefrom. Extension of said dates for any other cause shall be made only by the City Engineer. The City Engineer shall be the sole and final judge as to whether good cause has been shown to entitle Owner to an extension. Any extension granted pursuant to this paragraph shall not obligate City in any manner to grant other requests for extension.

9. Request for Extension; Granting. Any request for extension of any commencement and completion date shall be in writing, shall fully state the facts and grounds relied upon for said extension, and shall be delivered to City in the manner hereinafter specified for services of notices. Extensions shall be granted in writing and any purported oral extension or purported oral agreement to make an extension shall not be valid for any purpose whatsoever.

10. Extension; No Release of Obligations. In the event it is deemed necessary by the City to extend the time of commencement or completion of the work to be done under this Agreement beyond the dates specified herein, such extension shall in no way release any guarantee given by Owner pursuant to this Agreement, or relieve or release those providing improvement security pursuant to this Agreement. The sureties in executing the bonds shall be deemed to stipulate and agree that no change, extension of time,

alteration or addition to the term of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on the bond, and to waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications.

11. Extension; Condition. The granting of any extension may be conditioned upon Owner providing City with increased Inspection Fees, a cash deposit which sum is equal to one hundred percent (100%), of the estimated cost of constructing the required improvements, and new or amended surety bonds in amounts increased to reflect increases in the cost of constructing the required improvements that have occurred prior to the granting of the extension, and the cost of additional inspection services.

12. No Waiver by the City, Final Acceptance. Inspection of the work and/or materials, or approval of work and/or materials inspected, use of the work by the public as public right-of-way, or statement by any officer, agent, or employee of the City indicating the work complies with the requirements of this Agreement, shall not relieve the Owner from the obligation to fulfill the Agreement as prescribed herein. Acceptance of any part or stage of said improvements shall not be final until a written notice of acceptance of all the improvements shall have been delivered to Owner.

13. Improvement Security. Concurrently with the execution hereof Owner shall furnish City:

(a) Improvement security in the sum of _____ DOLLARS (\$ _____), which sum is equal to one hundred percent (100%), of the estimated cost of constructing the required improvements and the cost of any other obligation to be performed by Owner hereunder, securing the faithful performance of this Agreement.

(b) Separate improvement security in the sum of _____ DOLLARS (\$ _____), which sum is equal to one hundred percent (100%) of the estimated cost of constructing the required improvements, security payment to the contractor, his subcontractor and to persons furnishing labor, materials or equipment to them for the construction of the required improvements, and for the payment of amounts due under the Unemployment Insurance Act with respect to such work or labor in connection with the installation of such improvements. The form of the improvement security shall be subject to the approval

of the City Attorney. Improvement security shall be reduced or released by City only in the manner provided by the City Engineer. No change, alteration or addition to the terms of this Agreement or the plans and specifications accompanying the same shall in any manner affect the obligation of those providing improvement security pursuant to this Agreement.

14. Maintenance Security: Concurrently with the execution hereof Owner shall furnish the City a maintenance and repair security in a form acceptable to the City Engineer in the amount of [REDACTED] DOLLARS (\$ [REDACTED]), to guarantee that all areas to be improved are free from defect for a period of one year after initial acceptance of entire work by the City. In the event Owner fails, neglects or refuses to maintain said areas, City is hereby authorized to expend all or any portion of said deposit during construction and during the one year maintenance period to accomplish the above.

15. Hold Harmless Agreement. Owner hereby agrees to, and shall, hold City, its elective and appointive boards, commissions, officers, agents and employees harmless from and against any or all loss, liability, expense, claim, costs, suits, damages of every kind, nature and description directly or indirectly arising from the performance of the work from Owner, Owner's contractors', subcontractors', agents' or employees' operations under this Agreement. Owner agrees to, and shall, defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused or alleged to have been caused, by reason of any of the aforesaid operations; provided as follows:

(a) That City does not, and shall not, waive any rights against Owner which it may have by reason of the aforesaid hold harmless agreement, because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in paragraph 16 hereof.

(b) That the aforesaid hold harmless agreement by Owner shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not City has prepared, supplied, or approved of plans and/or specifications for the project, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

16. Owner's Insurance. Concurrently with the execution hereof, Owner shall obtain or cause to be obtained and filed with the Risk Manager, all insurance required under this paragraph, and such insurance shall have been approved by the Risk Manager of City, as to form, amount and carrier. Prior to the commencement of work under this Agreement, Owner's contractor(s) shall obtain or cause to be obtained and filed with the Risk Manager, all insurance required under this paragraph, and such insurance shall have been approved by the Risk Manager of City, as to form, amount and carrier. Owner shall not allow any contractor(s) to commence work under this agreement until all insurance required for Owner and Owner's contractor(s) shall have been so obtained and approved. Said insurance shall be maintained in full force and effect until the completion of work under this Agreement and the final acceptance thereof by City. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

The City uses the online insurance program "PINS Advantage". Owner and contractor(s) will receive separate emails from the City's online insurance program requesting the email be forwarded to the responsible insurance provider(s). All certificates of insurance and original endorsements effecting coverage required in this Section must be electronically submitted through the online insurance program at www.PINSAdvantage.com.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001.)
2. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.

3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability Insurance.
- (b) Minimum Limits of Insurance. Owner shall maintain limits no less than (unless otherwise approved by the City's Risk Manager):
1. General Liability: \$3,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 2. Automobile Liability: \$2,000,000 combined single limit per accident for bodily injury and property damage.
 3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
- (c) Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials and employees; or the Owner shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- (d) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:
1. General Liability and Automobile Liability Coverages.
 - a. The City, its officers, agents, officials, employees and volunteers shall be named as additional insureds as respects: liability arising

out of activities performed by or on behalf of the owner; products and completed operations of the Owner, premises owned, occupied or used by the Owner, or automobiles owned, leased, hired or borrowed by the Owner. The coverage shall contain no special limitations on the scope of the protection afforded to the City, its officers, officials, employees or volunteers.

- b. The Owner's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Owner's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
- d. The Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Owner for the City.

3. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written

notice by certified mail, return receipt requested, has been given to the City.

- (e) Acceptability of Insurers. Insurance is to be placed with insurers with an A.M. Best rating of A- or better.
- (f) Verification of Coverage. Owner shall furnish City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The City reserves the right to modify these insurance requirements as the best interests of the City dictate.
- (g) Subcontractors. Owner and/or Owner's contractor(s) shall provide separate certificates and endorsements subject to all of the requirements stated herein.

17. Title to Improvements. Title to, and ownership of, all improvements constructed hereunder by Owner shall vest absolutely in City, upon completion and acceptance of such improvements by City unless otherwise provided.

18. Repair or Reconstruction of Defective Work. Except as otherwise expressly provided in this Agreement, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect, Owner guarantees all work executed by Owner and/or Owner's agents, and all supplies, materials and devices of whatsoever nature incorporated in, or attached to the work, or otherwise delivered to City as a part of the work pursuant to the Agreement, to be free of all defects of workmanship and materials for a period of one year after initial acceptance of the entire work by City. Owner shall repair or replace any or all such work or material, together with all or any other work or materials which may be displaced or damaged in so doing, that may prove defective in workmanship or material within said one year guarantee period without expense or charge of any nature whatsoever to City. Owner further covenants and agrees that when defects

in design, workmanship and materials actually appear during the guarantee period, and have been corrected, the guarantee period shall automatically be extended for an additional year to insure that such defects have actually been corrected.

In the event the Owner shall fail to comply with the conditions of the foregoing guarantee within thirty (30) days time, after being notified of the defect in writing, City shall have the right, but shall not be obligated, to repair or obtain the repair of the defect, and Owner shall pay to City on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the public health, safety, or welfare, City shall have the right to immediately repair, or cause to be repaired, such defect, and Owner shall pay to City on demand all costs and expense of such repair. The foregoing statement relating to hazards to health and safety shall be deemed to include either temporary or permanent repairs which may be required as determined in the sole discretion and judgment of City.

If City, at its sole option, makes or causes to be made the necessary repairs or replacements or performs the necessary work, Owner shall pay, in addition to actual costs and expenses of such repair or work, fifty percent (50%) of such costs and expenses for overhead and interest at the maximum rate of interest permitted by law accruing thirty (30) days from the date of billing for such work or repairs.

19. Owner Not Agent of City. Neither Owner nor any of Owner's agents or contractors are or shall be considered to be agents of City in connection with the performance of Owner's obligations under this Agreement.

20. Notice of Breach and Default. If Owner refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extension thereof, or fails to obtain completion of said work within such time, or if Owner should be adjudged as bankrupt, or should make a general assignment for the benefit of Owner's creditors, or if a receiver should be appointed, or if Owner, or any of Owner's contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement, the City Engineer may serve written notice on Owner and

Any party or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

23. Recordation of Abstract. Concurrently with the execution of this Agreement, Owner has executed and has caused to be acknowledged an abstract of this Agreement. Owner agrees City may record said abstract in the Official Records of Alameda County.

24. Assignment. This Agreement will not be assigned without the prior written consent of City.

25. Additional Terms and Conditions. This Agreement is subject to the following additional terms and conditions, if any:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year herein above written.

**CITY OF SAN LEANDRO,
a Municipal Corporation**

Dated: _____

By: _____
Jeff Kay
City Manager

Owner(s)

Dated: _____

By: _____
Signature

Print name

Title

Attach:

[Notary Acknowledgment for each signature]
[Approved Engineer's Estimate]

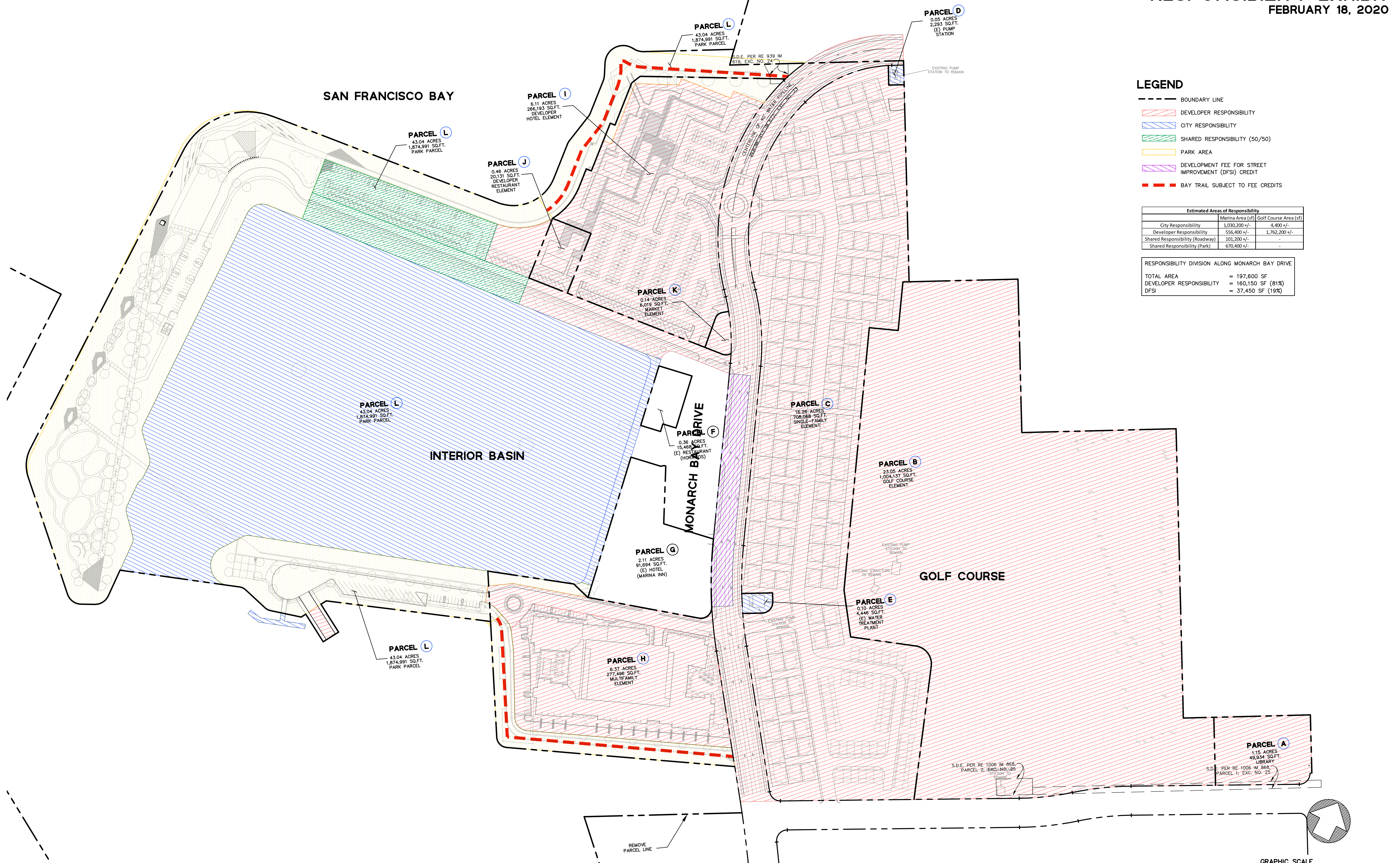
Approved as to Form:

Richard Pio Roda, City Attorney

Exhibit R

SAN LEANDRO SHORELINE RESPONSIBILITY EXHIBIT

FEBRUARY 18, 2020



- LEGEND**
- BOUNDARY LINE
 - DEVELOPER RESPONSIBILITY
 - CITY RESPONSIBILITY
 - SHARED RESPONSIBILITY (50/50)
 - PARK AREA
 - DEVELOPMENT FEE FOR STREET IMPROVEMENT (DFS) CREDIT
 - BAY TRAIL SUBJECT TO FEE CREDITS

Estimated Areas of Responsibility		
	Marina Area (sf)	Golf Course Area (sf)
City Responsibility	1,030,200 +/-	4,400 +/-
Developer Responsibility	556,400 +/-	1,762,200 +/-
Shared Responsibility (Roadway)	101,200 +/-	-
Shared Responsibility (Park)	670,400 +/-	-

RESPONSIBILITY DIVISION ALONG MONARCH BAY DRIVE	
TOTAL AREA	= 197,600 SF
DEVELOPER RESPONSIBILITY	= 160,150 SF (81%)
DFS	= 37,450 SF (19%)



TABLE OF CONTENTS

	<u>Page</u>
RECITALS	1
ARTICLE 1. GENERAL PROVISIONS	4
1.1. Parties and Responsibilities.	4
1.2. Property Subject to this Agreement.	4
1.3. Term of the Agreement.	5
1.4. The Project	6
1.4.3.2. Conditions for Benefit of Developer. Developer’s obligation to execute the Developer Hotel Ground Lease is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below (“Developer Hotel Ground Lease Commencement Conditions Precedent”), which are solely for the benefit of Developer, any of which may be waived by the Developer in its sole and absolute discretion within the time periods provided for herein.	13
1.4.4.2. Conditions for Benefit of Developer. Developer’s obligation to execute the Multifamily Ground Lease is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below (“ Developer’s Multifamily Ground Lease Commencement Conditions Precedent ”), which are solely for the benefit of Developer, any of which may be waived by the Developer in its sole and absolute discretion within the time periods provided for herein.	17
1.4.5.2. Conditions for Benefit of Developer. Developer’s obligation to execute the Developer Restaurant Ground Lease is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent described below (“ Developer’s Restaurant Ground Lease Commencement Conditions Precedent ”), which are solely for the benefit of Developer, any of which may be waived by the Developer in its sole and absolute discretion within the time periods provided for herein.	21
1.5. Community Facilities District.	29
1.6. Labor Agreements.	29
1.7. Performance Bonds and Payment Bonds.	31
Prior to commencement of any construction work on the Project, Developer shall cause its general contractor for each Element of the Project to deliver to the City copies of payment bond(s) and performance bond(s) issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of	

construction for each Element of the Project. The bonds shall name the City as obligee and shall be in a form acceptable to the City Attorney. The bonds for each Element of the Project shall remain in place and in full force until release by the City upon completion of the Element as determined by the City. The Golf Course Element shall be accepted by the City Council prior to the release of any bonds for such work. In lieu of such performance and payment bonds, subject to City Attorney’s approval of the form and substance thereof, Developer may submit evidence satisfactory to the City of contractor’s ability to commence and complete construction of the Project in the form of an irrevocable letter of credit, pledge of cash deposit, certificate of deposit, or other marketable securities held by a broker or other financial institution acceptable to the City, with signature authority of the City required for any withdrawal, or a completion guaranty in a form and from a guarantor acceptable to City. If proposed by Developer, the City shall reasonably consider the use of subguard bonds for construction of private improvements by or on behalf of the Developer or its assigns (but not public improvements to be constructed by or on behalf of the Developer or its assigns). Such evidence must be submitted to City in approvable form in sufficient time to allow for review and approval prior to the scheduled construction start date.31

1.8. Mitigation Monitoring and Reporting Program (MMRP).32

ARTICLE 2. DEVELOPMENT APPROVALS FOR THE PROJECT32

2.1. Project Approvals. In order to develop the Project as contemplated in this Agreement, the Project will require land use approvals, entitlements, development permits, and use and/or construction approvals, which may include, without limitation: vesting tentative maps, development plans, conditional use permits, variances, subdivision approvals, street abandonments, design review approvals, demolition permits, improvement agreements, infrastructure agreements, grading permits, building permits, right-of-way permits, lot line adjustments, site plans, sewer and water connection permits, certificates of occupancy, parcel maps, lot splits, landscaping plans, master sign programs, transportation demand management programs, encroachment permits, and amendments thereto and to the Project Approvals. Developer shall apply for and obtain all such environmental and land use approvals and entitlements related to the development of the Project. For purposes of this Agreement, the term “**Project Approvals**” means all of the approvals, plans and agreements described in this Section 2.1. City and Developer agree to work diligently and in good faith toward appropriate planning entitlements and building permit approvals for each phase of construction.32

2.2. City Review and Approval. The City shall have all rights to review and approve or disapprove all Project Approvals and other required submittals in accordance with the City Municipal Code, and shall apply the same standards to and shall retain the same discretion over such matters as it has with respect to any other development applications submitted to the City. Nothing set forth in this Agreement shall be construed as the City’s approval of any or all of the Project Approvals. This Agreement does not require that City comply with the implied covenant of good faith and fair dealing in reviewing and approving or disapproving Project Approvals and other required submittals with respect to the Project. In no event shall City’s disapproval or failure to approve the Project Approvals and/or other required submittals be deemed a breach or Default of this Agreement. In the event that the Project Approvals and/or other required submittals as approved herein are materially different than as described in the Scope of Development, City and Developer shall each approve such changes in writing as a condition to City’s conveyance of the applicable Element to Developer.33

2.3. Defects in Plans. The City shall not be responsible either to the Developer or to third parties in any way for any defects in the Construction Plans, nor for any structural or other defects in any work done according to the approved Construction Plans, nor for any delays reasonably caused by the review and approval processes established by this Article 2.....33

2.4. City Discretion. This Agreement does not require that City comply with the implied covenant of good faith and fair dealing in reviewing and approving or disapproving land use and other entitlements, permits, and approvals with respect to the Project. In no event shall City’s disapproval or failure to approve the Development Agreement or any land use and/or other entitlements, permits, and approvals with respect to the Project, or City’s amendment of the general plan, zoning or other land use designations applicable to the Property or the Project, be deemed a breach or Default of this Agreement. In the event that the Project as approved herein is materially different than the Project as described in the Scope of Development, City and Developer shall each approve such changes in writing as a condition precedent to the conveyance of the applicable Element.....34

2.5. Site Condition. Developer shall have the opportunity to visit and investigate each portion of the Property prior to Developer’s acquisition of such portion of the Property, and to satisfy itself as to the current condition of the Property. City shall grant Developer and its representatives and agents a right of entry during the term of this Agreement to enter upon the portions of the Property owned by the City for purposes of conducting Developer’s due diligence

inspection, provided that Developer shall (a) give City twenty-four (24) hours telephone or written notice of any intended access which involves work on the Property or may result in any impairment of the use of the Property by its current occupants; (b) access the Property in a safe manner; (c) conduct no invasive testing or boring without the written consent of the City; (d) comply with all laws and obtain all permits required in connection with such access; and (e) conduct inspections and testing, subject to the rights of existing tenants of the Property, if any (which inspections and testing, if conducted at times other than normal business hours, shall be conducted only after obtaining the City’s written consent, which shall not be unreasonably withheld). The right of entry agreement shall be in writing in a form approved by the City and shall contain an indemnity provision stating that the Developer shall indemnify, protect, defend, and hold harmless the City and its elected officials, officers, employees, representatives, members, and agents (“Indemnitees”) from and against any and all losses, liabilities, damages, claims or costs (including attorneys’ fees), arising out of the Developer’s entry upon the Property. This indemnity obligation shall survive the termination of the right of entry agreement. The Developer’s obligations to indemnify Indemnitees shall not extend to losses to the extent such losses arise out of the negligence or willful misconduct of one or more Indemnitees.34

2.6. As Is Conveyance. Developer understands and acknowledges that the rights conveyed to the Developer under this Agreement are for the Property in an “as is” condition, with no warranty, express or implied, by the City as to the physical condition including, but not limited to, the soil, its geology, or the presence of known or unknown faults or Hazardous Materials or hazardous waste (as defined by state and federal law); provided, however, that the foregoing shall not relieve the City from any legal obligation it may have regarding the disclosure of any such conditions of which the City has actual knowledge. City hereby discloses to Developer the actual knowledge City has with respect to the deposit of hazardous materials on the Property, which is described in Exhibit K hereto and incorporated herein. Developer shall be responsible for any necessary demolition, grading or other work necessary to prepare the Property for the Project.34

2.7. Pre-Closing Work. Developer may request City approval to perform certain work upon the Property prior to the close of escrow for the Single Family PSA or commencement of any of the Ground Leases. Such work may include, without limitation, demolition of existing buildings and improvements on the Property, deposit of soil upon portions of the Property in accordance with Section 1.4.17 hereof, and other site preparation

work. Such request shall be in writing, and shall include a narrative description of the work which Developer proposes to undertake and such engineering and/or architectural plans and drawings as may be required by the City and other governmental agencies with jurisdiction over such proposed work. City’s approval of the requested work may be granted or denied in City’s sole discretion. In the event City approves the requested work, City and Developer shall enter into a right of entry agreement in the form described in Section 2.5 hereof. Any work performed by Developer hereunder shall be at the sole risk of Developer, and City shall not be responsible to compensate Developer for any such work performed upon the Property. Developer shall comply with all laws and obtain all permits required in connection with such work.35

2.8. Not a Development Agreement. The Parties acknowledge that this Agreement does not contain the required elements of a “development agreement” as defined in Government Code Section 65864, *et seq.* This Agreement does not address the fundamental purpose of a development agreement in that it does not grant any vested rights to the Developer or provide any assurance to the Developer that upon approval of the Project, the Developer may proceed with the Project in accordance with existing policies, rules and regulations, and conditions of approval. Instead, this Agreement provides that the Project will be required to comply with any applicable rules, regulations and policies governing permitted uses of the land, density, design, improvement and construction standards and specifications applicable to the Project, whether or not in conflict with rules, regulations or policies existing as of the date of this Agreement. Accordingly, the Parties agree that this Agreement is not a development agreement as defined in Government Code Section 65864, *et seq.*35

ARTICLE 3. [Deleted].....35

ARTICLE 4. AMENDMENTS35

4.1. Amendments. Any amendments to this Agreement shall be made in writing executed by the parties hereto, and neither Developer nor City shall be bound by verbal or implied agreements. The City Manager (or designee) shall be authorized to enter into certain amendments to this Agreement on behalf of the City in accordance with Section 9.18 hereof.35

4.2. Amendments Requested by Lenders. In the event that Developer or its Lender requests any amendments to this Agreement, or any of the documents to be executed pursuant to this Agreement, the City shall reasonably consider such request. Any costs incurred by the City in connection with such amendments requested by

Developer or its Lender, including without limitation attorneys’ fees and consultants’ fees for the review of the request and preparation of an amendment, shall be borne by the Developer.....	35
ARTICLE 5. DEFAULT, REMEDIES AND TERMINATION	36
5.1. Events of Default.	36
5.2. Meet and Confer.	36
5.3. Remedies and Termination.	36
5.4. Legal Action by Parties.....	37
5.5. Remedies in Conveyance Agreements. Nothing in this Agreement shall modify any rights or remedies the Parties may have under the Single Family Purchase and Sale Agreement, Developer Hotel Ground Lease, Multifamily Ground Lease, Developer Restaurant Ground Lease, Market Ground Lease, Public Improvements Agreement, or any other agreements entered into between the Parties to carry out and implement this Agreement.....	37
5.6. Termination.....	37
ARTICLE 6. COOPERATION AND IMPLEMENTATION	38
6.1. Further Actions and Instruments.....	38
6.2. Regulation by Other Public Agencies.....	38
6.3. Other Governmental Permits and Approvals; Grants.	39
6.4. Cooperation in the Event of Legal Challenge.....	39
6.5. Revision to Project.....	39
6.6. State, Federal or Case Law.	39
6.7. Defense of Agreement.	40
ARTICLE 7. TRANSFERS AND ASSIGNMENTS	40
7.1. Right to Assign.	40
7.2. Release upon Transfer.....	41
7.3. Covenants Binding on Successors and Assigns.....	42
ARTICLE 8. MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE.....	42
8.1. Mortgagee Protection.....	42
8.2. Mortgagee Not Obligated.	42
8.3. Notice of Default to Mortgagee; Right of Mortgagee to Cure.....	42
8.4. No Supersedure.....	43
8.5. Technical Amendments.	43
ARTICLE 9. MISCELLANEOUS PROVISIONS.....	43
9.1. Limitation on Liability.....	43
9.2. Force Majeure.	43
9.3. Notices, Demands and Communications Between the Parties.	44

9.4.	Project as a Private Undertaking; No Joint Venture or Partnership.....	45
9.5.	Severability.	45
9.6.	Section Headings.	45
9.7.	Construction of Agreement.....	45
9.8.	Entire Agreement.....	45
9.9.	Calendar Days.....	47
	Unless otherwise expressly provided for herein, all references to any amount of days shall be a reference to calendar days.	47
9.10.	Estoppel Certificates.	47
9.11.	No Waiver.....	47
9.12.	Time Is of the Essence.	47
9.13.	Applicable Law.....	47
9.14.	Attorneys’ Fees.	47
9.15.	Third Party Beneficiaries.....	48
9.16.	Constructive Notice and Acceptance.....	48
9.17.	Counterparts.....	48
9.18.	City Approvals and Actions.....	48
9.19.	Authority.....	48
	<u>EXHIBIT A</u>	50
	<u>EXHIBIT B</u>	1
	<u>EXHIBIT C</u>	3
	<u>EXHIBIT D</u>	5
	<u>EXHIBIT E</u>	6
	<u>EXHIBIT F</u>	7
	<u>EXHIBIT G</u>	8
	<u>EXHIBIT H</u>	9
	<u>EXHIBIT I</u>	12
	<u>EXHIBIT J</u>	18

EXHIBIT K.....1

EXHIBIT L.....6

EXHIBIT M.....7

EXHIBIT N.....8

EXHIBIT O.....9

EXHIBIT P.....10

EXHIBIT Q.....11

3439499.5