

Exhibit 4

Development Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of San Leandro
835 East 14th Street
San Leandro, CA 94577-3767
Attn: Community Development Director

Exempt from Recording Fees
Pursuant to Government
Code Sections 6103 and 27383

APNs: 075-0047-002-00, 075-0047-003-02, (Space Above This Line Reserved for Recorder's Use Only)
075-0047-007-00, 075-0041-002-01

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF SAN LEANDRO

AND

**CHANG INCOME PROPERTY PARTNERSHIP LP, SAN LEANDRO LAND SERIES
(R1), A DELAWARE LIMITED PARTNERSHIP**

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Development Agreement**” or this “**Agreement**”) is entered into as of _____, 2014 (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 Chang Income Property Partnership LP, San Leandro Land Series (R1), a Delaware limited partnership (“**Developer**”). City and Developer are referred to individually as “**Party**,” and collectively as the “**Parties**.”

RECITALS

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

A. The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of development, and discourage investment in and commitment to comprehensive planning that would make maximum efficient utilization of resources at the least economic cost to the public.

B. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 *et seq.* of the Government Code (the “**Development Agreement Legislation**”), which authorizes City to enter into a development agreement for real property with any person having a legal or equitable interest in such property in order to establish certain development rights in the property.

C. Developer has a fee interest in certain real property consisting of approximately 5.27 acres located adjacent to the San Leandro Bay Area Rapid Transit (“**BART**”) station, bordered by Martinez St., Thornton St., Alvarado St. and West Estudillo Ave., known as APN Nos. 075-0047-002-00, 075-0047-003-02, 075-0047-007-00, 075-0041-002-01 as more particularly described in Exhibit A attached hereto, and as diagrammed in Exhibit B attached hereto (the “**Property**”).

D. On September 4, 2007 City adopted the San Leandro Downtown Transit Oriented Development Strategy (the “**TOD Strategy**”) to establish a land use framework, a comprehensive circulation plan, design and development guidelines and a series of implementation actions in order to increase transit ridership and to enhance downtown San Leandro.

E. The Property is located within the TOD-BART Mixed Use and Public/Institutional areas, as designated and defined in the TOD Strategy.

F. Developer intends to develop the Property in three phases as a mixed-use commercial/limited retail/office complex, which will include public open space, construction of bicycle and pedestrian walkways and access to local transit (as defined more fully in Section 1.4 below, the “**Project**”).

G. The complexity, magnitude and long-range nature of the Project would be difficult for Developer to undertake if City had not determined, through this Development

Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the Project. As a result of the execution of this Development Agreement, both Parties can be assured that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project.

H. City is desirous of advancing the socioeconomic interests of City and its residents by attracting advanced technology companies to the San Leandro fiber loop, attracting companies that can create significant employment that will benefit from access to and create ridership for BART and Alameda Contra Costa Transit; promoting pedestrian and bicycle access to downtown San Leandro; promoting the productive use of property and encouraging quality development and economic growth, thereby enhancing employment opportunities, including but not limited to high-skilled technology and related professional employment, for residents and expanding City's property tax base.

I. 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 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 substantially increased property tax revenues; (4) City will benefit from increased employment and housing opportunities for residents of City that are created by the Project; and (5) the Project will contribute to the revitalization of Downtown San Leandro.

J. Developer has applied for, and City has granted, the Project Approvals (as defined in Section 1.7) in order to protect the interests of its citizens in the quality of their community and environment.

K. 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 "**2007 FEIR**") certified by City on September 4, 2007 in connection with the TOD Strategy. 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.

L. In addition to the Project Approvals, the Project may require various additional land use and construction approvals, termed Subsequent Approvals (as defined in Section 1.7.6), in connection with development of the Project.

M. City has given the required notice of its intention to adopt this Development Agreement and has conducted public hearings thereon pursuant to Government Code

Section 65867. As required by Government Code Section 65867.5, City has found that the provisions of this Development Agreement and its purposes are consistent with the goals, policies, standards and land use designations specified in City’s General Plan.

N. On February 20, 2014, the City of San Leandro Planning Commission (the “**Planning Commission**”), the initial hearing body for purposes of development agreement review, recommended approval of this Development Agreement pursuant to Resolution No. 2014-02.

O. On _____, 2014, the City of San Leandro City Council (the “**City Council**”) adopted its Ordinance No. ____ (the “**Approving Ordinance**”) approving this Development Agreement and authorizing its execution. The Approving Ordinance will take effect on _____, 2013 (the “**Effective Date**”).

P. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Development Agreement is appropriate. This Development Agreement will eliminate uncertainty regarding Project Approvals (including the Subsequent Approvals), thereby encouraging planning for, investment in and commitment to develop the Property. Continued use and development of the Property will in turn provide substantial employment and property tax benefits, and contribute to the provision of needed infrastructure and housing for area growth, thereby achieving the goals and purposes for which the Development Agreement Legislation was enacted.

Q. The terms and conditions of this Development Agreement have undergone extensive review by City staff, the Planning Commission and the City Council at publicly noticed meetings and have been found to be fair, just and reasonable and in conformance with the City General Plan and the Development Agreement Legislation, and, further, 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 Development 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.

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

1.1.2. Developer. Developer is a Delaware limited partnership, with offices located at 520 South El Camino Boulevard, San Mateo, CA, 94402. “Developer,” as used in this Development Agreement, includes any permitted assignee or successor-in-interest as herein provided.

1.2. Property Subject to this Development Agreement.

The Property known as APN 075-0047-002-00, 075-0047-003-02, 075-0047-007-00, 075-0041-002-01, as more particularly described in Exhibit A and shown in Exhibit B, is subject to this Development Agreement.

1.3. Term of the Agreement.

The term (“**Term**”) of this Development Agreement will commence upon the Effective Date and continue in full force and effect for a period of ten (10) years, with one automatic extension for another five (5)-year term upon completion of construction of Phase One of the Project (defined in Section 1.4.3 below), unless earlier terminated as provided in this Agreement. 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.

1.4. The Project

1.4.1. General. The Project contemplates the construction of a phased commercial and retail development, together with accessory automobile and bicycle parking and other ancillary improvements described in this Section 1.4.

1.4.2. Martinez Street and West Estudillo Avenue Vacation and Improvements. City and Developer shall enter into an agreement whereby City will vacate Martinez Street and West Estudillo Avenue. The Project includes Developer’s construction and maintenance of landscaping, green space and a bicycle path consistent with the East Bay Green Way plans, on the eastern portion of the former footprint of Martinez Street (the “**Martinez Street Improvements**”), as described in Exhibit C attached hereto and incorporated herein by this reference. Prior to construction of the Martinez Street Improvements, Developer and City will enter into a separate maintenance and improvement agreement that more fully describes the Martinez Street Improvements and sets forth Developer’s obligations to maintain the Martinez Street Improvements in more detail. The Martinez Street Improvements must be constructed prior to, or concurrently with, and completed prior to occupancy of the Phase One Improvements (defined below).

1.4.3. Phase One Improvements. Phase One of the Project consists of the construction of a minimum six-story commercial office building with a minimum square footage of 120,000 square feet that may include limited retail space of 12,000 square feet or less (“**Phase One Improvements**”). It is anticipated that Phase One Improvements will include all of the following construction:

a. Construction of bundled parking up to a maximum ratio of 3.6 parking spaces per 1,000 square feet of office or retail space. For the purpose of this Agreement, “bundled parking” shall mean on-site parking spaces that are devoted to exclusive use by tenants of the Project as part of their lease. Developer shall have the right to charge for all bundled parking in the Phase One. The parking may be constructed as either surface parking, above grade or below grade structured parking, as appropriate to accommodate the needs of Phase One.

b. Construction of a landscaped paseo (walkway) with public access easement (the “**Walkway Improvements**”) for safe passage from Alvarado St. to the BART Station to the east, as generally described in Exhibit C attached hereto and incorporated herein by this reference. The Walkway Improvements will entail the removal and replacement of the existing pedestrian at-grade [train] crossing and replacing it with the paseo at a location, subject to City approval, closer to the BART station fare gates. Developer will use good faith efforts to obtain approvals and permits from the applicable agencies that are necessary to construct the Walkway Improvements. It is understood that Developer has no control over the granting of approvals necessary to complete any improvements in the railroad right-of- way bordering the project site along Martinez Street . In the event Developer is not granted any required permits or approvals related to complete the work contemplated by this subsection, the Project may proceed to construction as approved in the Project Approvals and contemplated by this Agreement. Completion of improvements within any railroad right-of-way shall not be a condition of approval of the Project.

c. Construction of bicycle parking, including bicycle lockers and shelters, as mutually agreed between City and Developer consistent with the amount of bicycle parking needed for the Phase One Improvements.

d. Provided that there are no construction schedule conflicts with the development of the proposed multi-phased development project by BRIDGE Housing Corporation at 1400 San Leandro Boulevard (currently used as a BART parking lot) and that there are no costs to be borne by Developer, Developer shall, if needed, make a good faith effort to work with BRIDGE Housing Corporation to provide temporary parking for BART patrons on the Developer’s site while BRIDGE’s development project is under construction.

1.4.4. Phase Two Improvements. Phase Two of the Project consists of the construction of a minimum six story building with a minimum square footage of 120,000 square feet that would consist of commercial office space, and in addition may include limited retail space of 12,000 square feet or less (“**Phase Two Improvements**”). Phase Two Improvements will include all of the following construction:

a. Construction of bundled parking up to a maximum ratio of 3.0 parking spaces per 1,000 square feet of office or retail space. Developer shall have the right to charge for all bundled parking in Phase Two. The parking may be constructed as above grade or below grade structured parking as appropriate, to accommodate a sufficient number of parking spaces and levels for both the Phase Two and the Phase Three Improvements.

b. Construction of bicycle parking, including bicycle lockers and shelters, as mutually agreed between City and Developer consistent with the amount of bicycle parking needed for the Phase Two Improvements.

c. Completion of improvements within any railroad right-of-way.

1.4.5. Phase Three Improvements. Phase Three of the Project consists of the construction of a minimum five story building with a minimum square footage of 100,000 square feet that would consist of commercial office space, and in addition may include limited retail

space of 12,000 square feet or less (“**Phase Three Improvements**”). Phase Three Improvements will include construction of bundled parking up to a maximum of 3 parking spaces per 1,000 square feet of office or retail space. Developer shall have the right to charge for all bundled parking in the Phase Three. The parking may be constructed as above grade or below grade structured parking as appropriate, to accommodate a sufficient number of parking spaces and levels for the Phase Two and the Phase Three Improvements. Phase Three Improvements also include bicycle parking, including bicycle lockers and shelters, as mutually agreed between City and Developer.

The maximum square footage allowed under this Agreement for the Phase One, Phase Two and Phase Three Improvements may not exceed 500,000 square feet in total.

1.4.6. Any proposed residential uses in Phases 2 and 3 will require entitlement or design approval, including an amendment to the Planned Development and Site Plan Review, by the Planning Commission and the City Council.

1.4.7. Additional Unbundled Parking. Additional parking in excess of the 3.6 per 1000 square feet of building area parking spaces in Phase 1, 3.0 per 1000 square feet in Phase 2 and 3 may be constructed in Phase 1, 2, or 3 at the developer’s sole discretion, provided these additional spaces are “unbundled” for public use. For the purpose of this Agreement “unbundled parking” shall mean on-site public parking spaces that are available separately from those bundled spaces provided to an occupant of the Project for that occupant’s exclusive use. Developer may elect to charge parking fees for the use of the unbundled spaces. Developer shall have the right to charge for unbundled parking. It is further understood that parking spaces in excess of 3.6 spaces per 1000 square feet of building area constructed in Phase 1 would constitute a “front loading” of the parking that will ultimately be required to serve subsequent phases of the development. The “bundled” and “unbundled” parking spaces may be constructed as at grade surface parking, as above grade or below grade structured parking as appropriate, to accommodate a sufficient number of parking spaces for all phases of the development.

1.4.8. Landscaping and Public Outdoor Activity Improvements. The Project includes Developer’s construction and maintenance of a minimum of approximately 30,000 square feet of public and outdoor activity area (“**Public Improvements**”) for use by the building occupants and by the general public as further described in Exhibit D attached hereto and incorporated herein by this reference. Developer shall retain the right to control use and access of the public and outdoor activity areas located on the Project site (“**Activity Areas**”), and may reasonably regulate public access to the Activity Areas to daylight hours. Developer may temporarily restrict public access to portions of the Activity Areas for occasional private events for Project tenants.

1.4.9. Public Art. Developer shall finance and place public art at appropriate locations on the project site.

a. The amount to be used to fund the public art will be calculated as one percent (1%) of the construction budget (the “**Public Art Fund**”), as based on the City’s review of the Developer’s final construction budget for each phase. The Developer shall have the option to 1) install the public art in each phase of construction, or 2) “frontload” the art

installation in Phase 1 or Phase 2 with the approval of the Community Development Director. Any costs in excess of 1% of the construction costs of Phase 1 and/or Phase 2 shall be considered a credit against the Public Art fund for subsequent phases.

b. Developer must provide an attractive, prominent and visible freestanding art object, such as a large sculpture or fountain in each phase. Eligible expenses for the Public Art Fund include: art and artist selection process, site preparation, design, acquisition and/or construction of the art works. Developer shall have sole discretion in selection of the artist(s), the art piece or pieces, and the location of the art. Certain landscaping features, if appropriately designed and in consultation with an appropriate artist, may also be considered art under these provisions, including but not limited to water features, open space seating, Activity Area amenities, lighting and special paving installations.

c. Developer is responsible for maintenance of all public art located on the Property.

d. In lieu of funding on-site public art, Developer may fulfill all or a portion of its requirements under this Section 1.4.7 by making a payment calculated as one-half of one percent (0.5%) of the total construction budget to the City, to be deposited into a public art fund managed by the City, which will be used exclusively for eligible expenses consistent with the expenses set forth in Section 1.4.7(b) above.

1.4.10. Landscaping. Each phase of construction includes Developer's construction and maintenance of 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.

1.4.11. Maintenance. City and Developer will enter into a separate maintenance agreement that will set forth the requirements of Developer to maintain the Property, including but not limited to all landscaping, all buildings and the public art.

1.4.12. LEED Rating. Developer shall design each phase of improvements to achieve a minimum Silver LEED rating for commercial and mixed-use space and, if applicable, an equivalent Green Point Rating (from Build It Green) for residential space.

1.5. Downtown San Leandro Community Benefits District Following construction of the Project, Developer shall support the Downtown San Leandro Community Benefits District.

1.6. Local Hiring . It is in the interests of the 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. The City has a strong public interest in encouraging hiring local firms and businesses for major projects within the City.

In order to further these goals, Developer will 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:

- For the purpose of this Section 1.6, 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;
- Developer will conduct outreach to make City businesses aware of the availability of project related contracts by (a) advertising such opportunities in the local newspaper(s) and (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. Developer shall keep records of these outreach efforts and shall provide them to the City upon request.
- Developer and its contractors and subcontractors will 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;
- Developer retains the sole and absolute discretion to engage both professional and construction firms it deems best qualified for the tasks to be performed;
- The requirements of this section shall continue until the issuance of the first temporary certificate of occupancy for each phase of the Project.
- The requirements of this section are limited to the construction activities of the Project.

1.7. Project Approvals.

Developer has applied for and obtained various environmental and land use approvals and entitlements related to the development of the Project, as described below. For purposes of this Development Agreement, the term "**Project Approvals**" means all of the approvals, plans and agreements described in this Section 1.7. City and Developer agree to work diligently and in good faith toward appropriate planning entitlements and building permit approvals for each phase of construction.

1.7.1. 2007 FEIR. The 2007 FEIR, which was prepared for the TOD Strategy pursuant to CEQA, was recommended for adoption by the Planning Commission on August 23, 2007, and adopted with findings by the City Council on September 4, 2007, by Resolution No. 2007-111.

1.7.2. Mitigated Negative Declaration. The Mitigated Negative Declaration or Categorical Exemption, which was prepared pursuant to CEQA, was recommended for adoption by the Planning Commission on February 20, 2014, by Resolution No. 2014-02, and adopted with findings by the City Council on _____, 2014, by Resolution No. _____ (the “**MND**”).

1.7.3. Zoning Amendment. On _____, 2014, following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. _____, approved a zoning change of the Property from Downtown Area 5, Special Review Overlay District “(DA-5)(S)” to Downtown Area 5, Special Review and Planned Development Overlay District “(DA-5)(S)(PD),” and from Public-Semipublic District, Special Review Overlay District “(PS)(S)” to Public-Semipublic “(PS)(S)(PD)” (the “**Zoning Amendment**”).

1.7.4. Planned Development Project Approval. On _____, 201_, following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution No. _____, approved the Planned Development Project Application submitted by Developer for the Project (the “**Planned Development Permit**”).

1.7.5. Development Agreement. On _____, 201_, following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. _____, approved this Development Agreement and authorized its execution.

1.7.6. Subsequent Approvals. In order to develop the Project as contemplated in this Development Agreement, the Project may require land use approvals, entitlements, development permits, and use and/or construction approvals other than those listed in Sections 1.7.1 through 1.7.5 above, which may include, without limitation: development plans, amendments to applicable redevelopment 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 (collectively, “**Subsequent Approvals**”). At such time as any Subsequent Approval applicable to the Property is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Development Agreement applicable to Project Approvals and shall be treated as a “Project Approval” under this Development Agreement.

1.8. Definitions.

The capitalized terms used in this Development Agreement have the meanings set forth in Appendix I attached hereto.

ARTICLE 2.
DEVELOPMENT OF THE PROPERTY

2.1. Project Development.

Developer shall have a vested right to develop the Project on the Property, in accordance with the Vested Elements (defined in Section 2.2).

2.2. Vested Elements.

The permitted uses of the Property, the minimum and maximum density, number of commercial and retail units, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development applicable to the Property are as set forth in:

- a. The General Plan of City on the Agreement Date, including the General Plan Amendments (“**Applicable General Plan**”);
- b. The Zoning Ordinance of City on the Agreement Date, including the Zoning Amendment (“**Applicable Zoning Ordinance**”);
- c. Other rules, regulations, ordinances and policies of City applicable to development of the Property on the Agreement Date, except for any and all fees applicable to the development, which shall be vested as set forth in Section 2.6.3 of this Agreement, (collectively, together with the Applicable General Plan and the Applicable Zoning Ordinance, the “**Applicable Rules**”); and
- d. The Project Approvals, as they may be amended from time to time but only after Developer’s written consent;

and are hereby vested in Developer, subject to, and as provided in, the provisions of this Development Agreement (the “**Vested Elements**”). City hereby agrees to be bound with respect to the Vested Elements, subject to Developer’s compliance with the terms and conditions of this Development Agreement.

2.3. Development Construction Completion.

2.3.1. Timing of Development; Pardee Finding. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties’ agreement, it is the Parties’ intent to cure that deficiency by acknowledging and providing that, subject to any infrastructure phasing requirements that may be required by the Project Approvals, Developer shall have the right (without obligation) to develop the Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment.

2.3.2. Moratorium. No City-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within City, or portions of City, shall apply to the Property to the extent such moratorium or other limitation is in conflict with this Agreement; provided, however, the provisions of this Section shall not affect City's compliance with moratoria or other limitations mandated by federal, state or local governmental agencies or court-imposed moratoria or other limitations.

2.3.3. No Other Requirements. Nothing in this Development Agreement is intended to create any affirmative development obligations to develop the Project at all, or liability in Developer under this Development Agreement if the development fails to occur.

2.4. Effect of Project Approvals and Applicable Rules; Future Rules.

2.4.1. Governing Rules. Except as otherwise explicitly provided in this Development Agreement, development of the Property shall be subject to (a) the Project Approvals and (b) the Applicable Rules.

2.4.2. Changes in Applicable Rules; Future Rules.

a. To the extent any changes in the Applicable Rules, or any provisions of future General Plans, Specific Plans, Zoning Ordinances or other rules, regulations, ordinances or policies (whether adopted by means of ordinance, initiative, referenda, resolution, policy, order, moratorium, or other means, adopted by the City Council, Planning Commission, or any other board, commission, agency, committee, or department of City, or any officer or employee thereof, or by the electorate) of City (collectively, "**Future Rules**") are not in conflict with the Vested Elements, such Future Rules shall be applicable to the Project.

b. To the maximum extent permitted by law, City shall prevent any Future Rules from invalidating or prevailing over all or any part of this Agreement, and City shall cooperate with Developer and shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. City shall not support, adopt or enact any Future Rule, or take any other action which would violate the express provisions or spirit and intent of this Agreement or the Project Approvals. Developer reserves the right to challenge in court any Future Rule that would conflict with the Vested Elements or this Agreement or reduce the development rights provided by this Agreement.

c. A Future Rule that conflicts with the Vested Elements shall nonetheless apply to the Property if, and only if (i) consented to in writing by Developer; (ii) it is determined by City and evidenced through findings adopted by the City Council that the change or provision is reasonably required in order to prevent a condition dangerous to the public health or safety; (iii) required by changes in State or Federal law as set forth in Section 2.4.3 below;

(iv) it consists of changes in, or new fees permitted by, Section 2.6; or (v) it is otherwise expressly permitted by this Development Agreement.

d. Prior to the Effective Date, the Parties shall have prepared two (2) sets of the Project Approvals and Applicable Rules, one (1) set for City and one (1) set for Developer. If it becomes necessary in the future to refer to any of the Project Approvals or Applicable Rules, the contents of these sets are presumed for all purposes of this Development Agreement, absent clear clerical error or similar mistake, to constitute the Project Approvals and Applicable Rules.

2.4.3. Changes in State or Federal Laws. In accordance with California Government Code Section 65869.5, in the event that state or federal laws or regulations enacted after the Effective Date (“**State or Federal Law**”) prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet in good faith to determine the feasibility of any modification or suspension of this Agreement that may be necessary to comply with such State or Federal Law and to determine the effect such modification or suspension would have on the purposes and intent of this Agreement and the Vested Elements. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such State or Federal Law. In such an event, this Development Agreement together with any required modifications shall continue in full force and effect. In the event that the State or Federal Law operates to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Agreement, Developer may terminate this Agreement. In addition, Developer shall have the right to challenge (by any method, including litigation) the State or Federal Law preventing compliance with, or performance of, the terms of this Development Agreement and, in the event that such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect, unless the Parties mutually agree otherwise, except that if the Term of this Development Agreement would otherwise terminate during the period of any such challenge and Developer has not commenced with the development of the Project in accordance with this Development Agreement as a result of such challenge, the Term shall be extended for the period of any such challenge.

2.4.4. Conflicts. In the event of an irreconcilable conflict between the provisions of the Project Approvals (on the one hand) and the Applicable Rules (on the other hand), the provisions of the Project Approvals shall apply. In the event of a conflict between the Project Approvals (on the one hand) and this Development Agreement, in particular, (on the other hand), the provisions of this Development Agreement control.

2.5. Processing Subsequent Approvals.

City will accept, make completeness determinations, and process, promptly and diligently, to completion all applications for Subsequent Approvals for the Project, in accordance with the terms of this Development Agreement. The City acknowledges that following Project approval, any Subsequent Approval will require accelerated review and consideration by the City in order to satisfy Project construction schedule, financing, or other critical path requirements for the Project.

2.5.1. Scope of Review of Subsequent Approvals. By approving the Project Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its authority in considering any application for a discretionary Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise to prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed to be tools to implement those final policy decisions. The scope of the review of applications for Subsequent Approvals shall be limited to a review of substantial conformity with the Vested Elements and the Applicable Rules (except as otherwise provided by Section 2.4), and compliance with CEQA. Where such substantial conformity/compliance exists, City shall not deny an application for a Subsequent Approval for the Project.

2.6. Development Fees, Exactions; and Conditions, General. All fees, exactions, dedications, reservations or other impositions to which the Project would be subject, but for this Development Agreement, are referred to in this Development Agreement either as “Processing Fees,” (as defined in Section 2.6.2) or “Impact Fees” (as defined in Section 2.6.3).

2.6.2. Processing Fees. “**Processing Fees**” mean fees charged on a citywide basis to cover the cost of City review of applications for any permit or other review by City departments. Applications for Subsequent Approvals for the Project shall be charged Processing Fees to allow City to recover its actual and reasonable costs of processing Developer’s Subsequent Approvals with respect to the Project.

2.6.3. Impact Fees. “**Impact Fees**” means monetary fees, exactions or impositions, other than taxes or assessments, whether established for or imposed upon the Project individually or as part of a class of projects, that are imposed by City on the Project in connection with any Project Approval for the Project for any purpose, including, without limitation, defraying all or a portion of the cost of public services and/or facilities construction, improvement, operation and maintenance attributable to the burden created by the Project. Any fee, exaction or imposition imposed on the Project which is not a Processing Fee is an Impact Fee. No Impact Fees shall be applicable to the Project except as provided in this Development Agreement.

a. Only the specific Impact Fees listed in Exhibit E shall apply to the Project. The amount of any Impact Fees applicable to the Project shall be calculated based on the rate in effect at the time that each application for a building permit is submitted and payable upon the City’s issuance of a certificate of occupancy.

b. Any Impact Fees levied against or applied to the Project must be consistent with the provisions of applicable California law, including the provisions of Government Code Section 66000 *et seq.* (“**AB 1600**”). Developer retains all rights set forth in California Government Code Section 66020. Nothing in this Development Agreement shall diminish or eliminate any of Developer’s rights set forth in such section.

2.6.4. Conditions of Subsequent Approvals. In connection with any Subsequent Approvals, City shall have the right to impose reasonable conditions including, without limitation, normal and customary dedications for rights of way or easements for public access, utilities, water, sewers,

and drainage necessary for the Project; provided, however, such conditions and dedications shall not be inconsistent with the Applicable Rules or Project Approvals, nor inconsistent with the development of the Project as contemplated by this Agreement.

b. No conditions imposed on Subsequent Approvals shall require dedications or reservations for, or construction or funding of, public infrastructure or public improvements beyond those already included in the MMRP. In addition, any and all conditions imposed on Subsequent Approvals for the Project must comply with Sections 2.6.2 and 2.6.3 herein.

2.7. Life of Project Approvals and Subdivision Maps

2.7.1. Life of Vesting Tentative Map. The terms of any vesting tentative map for the Property, any amendment or reconfiguration thereto, or any subsequent tentative map, shall be automatically extended such that such tentative maps remain in effect for a period of time coterminous with the term of this Development Agreement.

2.7.2. Life of Other Project Approvals. The term of all other Project Approvals, including without limitation any Planned Development Permit, or other City approval or entitlement, shall be automatically extended such that these Project Approvals remain in effect for a period of time at least as long as the term of this Development Agreement.

2.7.3. Termination of Agreement. In the event that this Agreement is terminated prior to the expiration of the Term of the Agreement, the term of any tentative map or any other Project Approval and the vesting period for any final subdivision map approved as a Project Approval shall be the term otherwise applicable to the approval, which shall commence to run on the date that the termination of this Agreement takes effect (including any extensions).

2.7.4. Reliance on Project FEIR and MND. The 2007 FEIR and MND, which have been adopted by City as being in compliance with CEQA, addresses the potential environmental impacts of all phases of the Project as it is described in the Project Approvals. It is agreed that, in acting on any discretionary Subsequent Approvals for the Project, City will rely on the FEIR and MND to satisfy the requirements of CEQA to the fullest extent permissible by CEQA and City will not require a new initial study, negative declaration, EIR or subsequent or supplemental FEIR unless required by CEQA and will not impose on the Project any mitigation measures or other conditions of approval other than those specifically imposed by the Project Approvals and the MMRP or specifically required by the Applicable Rules.

2.7.5. Subsequent CEQA Review. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Approval for the Project, then the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Approval, and the City shall conduct such CEQA review as expeditiously as possible.

2.8. Developer's Right to Rebuild. Developer may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in

seismic requirements, or should the buildings located within the Project become functionally outdated, within Developer's sole discretion, due to changes in technology. Any such renovation or rebuilding shall be subject to the Vested Elements, shall comply with the Project Approvals, the building regulations existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

ARTICLE 3.
ANNUAL REVIEW

3.1. Annual Review. The annual review required by California Government Code Section 65865.1 will be conducted for the purposes and in the manner stated in those laws as further provided herein. As part of that review, City and Developer shall have a reasonable opportunity to assert action(s) that either Party believes have not been undertaken in accordance with this Development Agreement, to explain the basis for such assertion, and to receive from the other Party a justification for the other Party's position with respect to such action(s), and to take such actions as permitted by law. The procedure set forth in this article shall be used by Developer and City in complying with the annual review requirement. The City and Developer agree that the annual review process will review compliance by Developer and City with the obligations under this Development Agreement but will not review compliance with other Project Approvals.

3.2. Intentionally omitted.

3.3. Commencement of Process; Developer Compliance Letter.

At least fifteen (15) days prior to the anniversary of the Effective Date each year, Developer shall submit a letter to the Director of City's Community Development Department demonstrating Developer's good faith compliance with the material terms and conditions of this Development Agreement and shall include in the letter a statement that the letter is being submitted to City pursuant to the requirements of Government Code Section 65865.1.

3.4. Community Development Director Review.

Within thirty (30) days after the receipt of Developer's letter, the Community Development Director shall, acting in good faith, review Developer's submission and determine whether Developer has, for the year under review, demonstrated good faith compliance with the material terms and conditions of this Development Agreement. If Developer has demonstrated good faith compliance, then the Community Development Director shall make such a finding and send a letter back to Developer describing the Community Development Director's finding and any comments.

3.5. Community Development Director Noncompliance Finding.

If the Community Development Director, acting in good faith, finds and determines that there is substantial evidence that Developer has not complied in good faith with the material terms and conditions of this Development Agreement and that Developer is in material breach of this Development Agreement for the year under review, the Community Development Director shall issue and deliver to Developer a written "**Notice of Default**" specifying in detail the nature

of the failures in performance that the Community Development Director claims constitutes material noncompliance, all facts demonstrating substantial evidence of material noncompliance, and the manner in which such noncompliance may be satisfactorily cured in accordance with the Development Agreement. In the event that the material noncompliance is an Event of Default pursuant to Article 5 herein, the Parties shall be entitled to their respective rights and obligations under both Articles 3 and 5 herein, except that the particular entity allegedly in default shall be accorded only one of the 60-day cure periods referred to in Sections 3.6 and 5.1 herein.

3.6. Cure Period.

If the Community Development Director finds that Developer is not in compliance, the Community Development Director shall grant a reasonable period of time for Developer to cure the alleged noncompliance. The Community Development Director shall grant a cure period of at least sixty (60) days and shall extend the sixty (60) day period if Developer is proceeding in good faith to cure the noncompliance and additional time is reasonably needed. At the conclusion of the cure period, the Community Development Director shall either (i) find that Developer is in compliance; or (ii) find that Developer is not in compliance.

3.7. Referral of Noncompliance to City Council.

The Community Development Director shall refer the alleged default to the City Council if Developer fails to cure the alleged noncompliance to the Community Development Director's reasonable satisfaction during the prescribed cure period and any extensions thereto. The Community Development Director shall refer the alleged noncompliance to the City Council if Developer requests a hearing before the City Council. The Community Development Director shall prepare a staff report to the City Council which shall include, in addition to Developer's letter, (i) demonstration of City's good faith compliance with the terms and conditions of this Development Agreement; (ii) the Notice of Default; and (iii) a description of any cure undertaken by Developer during the cure period.

3.8. Delivery of Documents.

At least five (5) days prior to any City hearing regarding Developer's compliance with this Development Agreement, City shall deliver to Developer all staff reports and all other relevant documents pertaining to the hearing and Developer's alleged non-compliance with this Agreement.

3.9. City Council Compliance Finding.

If the City Council, following a noticed public hearing pursuant to Section 3.7, determines that Developer is in compliance with the material terms and conditions of this Development Agreement, the annual review shall be deemed concluded. City shall, at Developer's request, issue and have recorded a Certificate of Compliance indicating Developer's compliance with the terms of this Development Agreement.

3.10. City Council Noncompliance Finding.

If the City Council, at a properly noticed public hearing pursuant to Section 3.7, finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the material terms or conditions of this Development Agreement and that Developer is in material breach of this Development Agreement, Developer will have a reasonable time determined by the City Council to meet the reasonable terms of compliance approved by the City Council, which time shall be not less than thirty (30) days. If Developer does not complete the terms of compliance within the time specified, the City Council shall hold a public hearing regarding termination or modification of this Development Agreement. Notification of intention to modify or terminate this Development Agreement shall be delivered to Developer by certified mail containing: (i) the time and place of the City Council hearing; (ii) a statement as to whether City proposes to terminate or modify this Development Agreement and the terms of any proposed modification; and (iii) any other information reasonably necessary to inform Developer of the nature of the proceedings. At the time of the hearing, Developer shall be given an opportunity to be heard. The City Council may impose conditions to the action it takes as necessary to protect the interests of City; provided that any modification or termination of this Development Agreement pursuant to this provision shall bear a reasonable nexus to, and be proportional in severity to the magnitude of, the alleged breach, and in no event shall termination be permitted except in accordance with Article 5 herein.

3.11. Relationship to Default Provisions.

The above procedures supplement and do not replace that provision of Section 5.4 of this Development Agreement whereby either City or Developer may, at any time, assert matters which either Party believes have not been undertaken in accordance with this Development Agreement by delivering a written Notice of Default and following the procedures set forth in Section 5.4.

ARTICLE 4.
AMENDMENTS

4.1. Amendments to Development Agreement Legislation.

This Development Agreement has been entered into in reliance upon the provisions of the Development Agreement Legislation as those provisions existed at the Agreement Date. No amendment or addition to those provisions or any other federal or state law and regulation that would materially adversely affect the interpretation or enforceability of this Development Agreement or would prevent or preclude compliance with one or more provisions of this Development Agreement shall be applicable to this Development Agreement unless such amendment or addition is specifically required by the change in law, or is mandated by a court of competent jurisdiction. In the event of the application of such a change in law, the Parties shall, upon request of one of the Parties, meet in good faith to determine the feasibility of any modification or suspension that may be necessary to comply with such new law or regulation and to determine the effect such modification or suspension would have on the purposes and intent of this Development Agreement and the Vested Elements. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon

mutual agreement of the Parties, be modified or suspended but only to the minimum extent necessary to comply with such new law or regulation. If such amendment or change is permissive (as opposed to mandatory), this Development Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this Development Agreement to permit such applicability. Developer and/or City shall have the right to challenge any new law or regulation preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. The Term of this Agreement shall automatically be extended for the duration of the period during which such new law or regulation precludes compliance with the provisions of this Agreement, if the amendment or change is mandatory and would result in a materially adverse impact on Developer.

4.2. Amendments to or Cancellation of Development Agreement.

This Development Agreement may be amended from time to time or canceled in whole or in part by mutual consent of both Parties in writing in accordance with the provisions of the Development Agreement Legislation. Review and approval of an amendment to this Development Agreement shall be strictly limited to consideration of only those provisions to be added or modified. No amendment, modification, waiver or change to this Development Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing that expressly refers to this Development Agreement and signed by the duly authorized representatives of both Parties. All amendments to this Development Agreement shall automatically become part of the Project Approvals.

4.3. Operating Memoranda.

The provisions of this Development Agreement require a close degree of cooperation between City and Developer and development of the Property hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the term of this Development Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer shall effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by City and Developer. No such operating memoranda shall constitute an amendment to this Development Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, acting in good faith, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section 4.3 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 4.2 above. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City.

4.4. Amendments to Project Approvals.

Notwithstanding any other provision of this Development Agreement, Developer may seek and City may review and grant amendments or modifications to the Project Approvals

(including the Subsequent Approvals) subject to the following (except that the procedures for amendment of this Development Agreement are set forth in Section 4.2 herein).

4.4.1. Amendments to Project Approvals – Major Amendments. Project Approvals (except for this Development Agreement the amendment process for which is set forth in Section 4.2) may be amended or modified from time to time, but only at the written request of Developer or with the written consent of Developer (at its sole discretion) and in accordance with Section 2.4. All amendments to the Project Approvals shall automatically become part of the Project Approvals, and shall be considered an Administrative Amendment as set forth in Section 4.4.2, except to the extent such amendments are considered by the Community Development Director, in his or her sole discretion, to constitute a major amendment. In such case, Developer consents to any major amendment's review before the Planning Commission for approval or recommendation to the City Council, whose review and approval or denial shall be final. All phases and elements of the Project described in this Agreement and the Project Approvals, including but not limited to the permitted uses of the Property, the minimum and maximum density and amount of square feet allocated to commercial and retail space, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development as set forth in all such amendments, except those considered by the Community Development Director to be a major amendment, shall be automatically vested pursuant to this Development Agreement, without requiring an amendment to this Development Agreement. Amendments to the Project Approvals shall be governed by the Project Approvals and the Applicable Rules, subject to Section 2.4. City shall not request, process or consent to any amendment to the Project Approvals that would affect the Property or the Project without Developer's prior written consent, which may be granted or withheld in Developer's sole discretion.

4.4.2. Administrative Amendments to Project Approvals. Upon the request of Developer for an amendment or modification of any Project Approval, the Community Development Director or his/her designee shall determine: (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (b) whether the requested amendment or modification substantially conforms with the material terms of this Development Agreement and the Applicable Rules. If the Community Development Director or his/her designee finds that the requested amendment or modification is both minor and substantially conforms with the material terms of this Development Agreement and the Applicable Rules, the amendment or modification shall be determined to be an "**Administrative Amendment**," and the Community Development Director or his or her designee may approve the Administrative Amendment, without public notice or a public hearing. Without limiting the generality of the foregoing, lot line adjustments, minor alterations in vehicle circulation patterns or vehicle access points, and variations in the design or location of structures that do not substantially alter the design concepts of the Project, substitution of comparable landscaping for any landscaping shown on any development plan or landscape plan, variations in the location or installation of utilities and other infrastructure connections and facilities that do not substantially alter design concepts of the Project, and minor adjustments to the Property legal description shall be deemed to be minor amendments or modifications. Any request of Developer for an

amendment or modification to a Project Approval that is determined not to be an Administrative Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Rules and this Agreement

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 Development Agreement (not including any failure by Developer to perform any term or provision of any other Project Approvals) shall constitute an "**Event of Default**," (i) if such defaulting Party does not cure such failure within sixty (60) days (such sixty (60) day period is not in addition to any (60) day cure period under Section 3.7, if Section 3.7 is applicable) following written notice of default from the other Party, where such failure is of a nature that can be cured within such sixty (60) day period, or (ii) if such failure is not of a nature which can be cured within such sixty (60) day period, the defaulting Party does not within such sixty (60) 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 Development 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 Development 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 Development Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Development 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 60-day cure period referred to in Section 5.1 (even if the 60-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 Development Agreement and/or terminate this Development Agreement pursuant to Section 5.6 herein. In the event that this Development 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 Development 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 Development 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. Without limiting the foregoing, Developer reserves the right to challenge in court any Future Rules that would conflict with the Vested Elements or the Subsequent Approvals for the Project or reduce the development rights provided by the Project Approvals.

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 Development Agreement, it being expressly understood and agreed that the sole legal remedy available to either Party for a breach or violation of this Development 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 Development Agreement by the other Party, or to terminate this Development 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 Development 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 Development Agreement by the other Party.

5.5. Reserved.

5.6. Termination.

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

5.6.2. Survival of Obligations. Upon the termination or expiration of this Development Agreement as provided herein, neither Party shall have any further right or obligation with respect to the Property under this Development Agreement except with respect to any obligation that is specifically set forth as surviving the termination or expiration of this Development Agreement. The termination or expiration of this Development Agreement shall not affect the validity of the Project Approvals (other than this Development Agreement) for the Project.

5.6.3. Termination by City. Notwithstanding any other provision of this Development Agreement, City shall not have the right to terminate this Development Agreement with respect to all or any portion of the Property before the expiration of its Term unless City complies with all termination procedures set forth in the Development Agreement Legislation and there is an alleged Event of Default by Developer and such Event of Default is not cured pursuant to Article 3 herein or this Article 5 and Developer has first been afforded an opportunity to be heard regarding the alleged default before the City Council and this Development Agreement is terminated only with respect to that portion of the Property to which the default applies.

ARTICLE 6. COOPERATION AND IMPLEMENTATION

6.1. Further Actions and Instruments.

Each Party to this Development 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 Development Agreement, subject to satisfaction of the conditions of this Development 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 Development Agreement to carry out the intent and to fulfill the provisions of this Development Agreement or to evidence or consummate the transactions contemplated by this Development 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 Development 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 Development 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, 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. The Parties acknowledge that the Project contemplates relocation and improvements of certain pedestrian crossing facilities along the rail lines that border the project site on the Martinez and Alvarado frontages ("**Pedestrian Crossing Improvements**"). Any work in these right of ways will require permits and approvals from various state and regional governmental agencies, including but not limited to BART, Union Pacific Railroad, Caltrans, and the California Public Utilities Commission. City acknowledges and agrees that Developer has no control over the granting of approvals necessary for the Pedestrian Crossing Improvements and that in the event Developer is not granted any required permits or approvals related to the Pedestrian Crossing Improvements, any phase of the Project may proceed to construction as approved in the Project Approvals and contemplated by this Agreement. Completion of the Pedestrian Crossing Improvements shall not be a condition of approval of the Project.

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, the Project Approvals or other development issues affecting the Property shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent 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 Development Agreement, the procedures leading to its adoption, or the Project Approvals for the Project, 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 reasonable and documented legal costs related to any action challenging the validity of any provision of this Development Agreement, procedures leading to its adoption, or the Project Approvals. 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. The City shall not settle any third party litigation of Project Approvals without Developer's consent, which consent shall not be unreasonably withheld, conditioned or delayed, subject to Developer's rights under this Agreement.

6.5. Revision to Project.

In the event of a court order issued as a result of a successful legal challenge, City shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Project Approvals 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 Vested Elements, or (ii) any conflict with the Vested Elements or frustration of the intent or purpose of the Vested Elements.

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 reasonable and 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.

Developer shall have the right to sell, assign or transfer (“**Transfer**”) in whole or in part its rights, duties and obligations under this Development Agreement, to any person or entity at any time during the Term of this Development Agreement without the consent of City; provided, however, in no event shall the rights, duties and obligations conferred upon Developer pursuant to this Development Agreement be at any time so Transferred except through a transfer of the Property. In the event of a transfer of a portion of the Property, Developer shall have the right to Transfer its rights, duties and obligations under this Development Agreement that are applicable to the transferred portion, and to retain all rights, duties and obligations applicable to the retained portions of the Property. Upon Developer's request, City shall cooperate with Developer and any proposed transferee to allocate rights, duties and obligations under this Development Agreement and the Project Approvals among the transferred Property and the retained Property.

7.2. Release upon Transfer.

Upon the Transfer of Developer's rights and interests under this Development Agreement pursuant to Section 7.1, Developer shall automatically be released from its obligations and liabilities under this Development 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 Development Agreement, provided that (i) Developer has provided to City written notice of such Transfer, and (ii) the transferee executes and delivers to City a written agreement in which (a) the name and address of the transferee is set forth and (b) the transferee expressly and unconditionally assumes all of the obligations of Developer under this Development Agreement with respect to that portion of the Property transferred. 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 Development Agreement.

7.3. Covenants Run with the Land.

All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Development 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. All of the provisions of this Development Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder (i) is for the benefit of such Property and is a burden upon such Property, (ii) runs with such Property, (iii) is binding upon each Party and each successive owner during its ownership of such Property or any portion thereof, and (iv) each person or entity having any interest therein derived in any manner through any owner of such Property, or any portion thereof, and shall benefit the Property hereunder, and each other person or entity succeeding to an interest in such Property.

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**"). This Development Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording this Development Agreement, including the lien of any Mortgage. Notwithstanding the foregoing, 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 Development 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 Development 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 Development Agreement, or by the Project Approvals and Applicable Rules.

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 Development 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 Development 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 Development Agreement by Developer, or for any amount which may become due to City under the terms of this Development Agreement; or (b) any member, officer, agent or employee of City be personally liable for any breach of this Development Agreement by City or for any amount which may become due to Developer under the terms of this Development Agreement.

9.2. Force Majeure.

The Term of this Development Agreement and the Project Approvals and the time within which Developer shall be required to perform any act under this Development 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, unavoidable casualties, litigation involving this Agreement or the Project Approvals, or any other cause beyond the reasonable control of Developer which substantially interferes with carrying out the development of the Project. 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 Development Agreement and any subdivision map or any of the other Project Approvals 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 Vested Elements, or Project Approvals. The Term of the Project Approvals shall therefore be extended by the length of any development moratorium or similar action; the amount of time any actions of public agencies prevent, prohibit or delay the construction, funding or development of the Project or prevents, prohibits or delays the

construction, funding or development of the Project; or the amount of time to finally resolve any mediation, arbitration, litigation or other administrative or judicial proceeding involving the Vested Elements, or 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, then the Term of this Development 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: Chang Income Property Partnership LP, San
Leandro Land Series (R1), a Delaware limited
partnership
Attn: Sunny Tong, Managing Director

with copies to: Reuben, Junius & Rose, LLP
One Bush Street, Suite 600
San Francisco, CA 94104
Attn: Andrew J. Junius

Notices personally delivered shall be deemed to have been received upon delivery, provided that delivery is on a business day. 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, provided that delivery is on a business day. 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 Development Agreement or in any document executed in connection with this Development Agreement shall be construed as making City and Developer joint venturers or partners.

9.5. Severability.

If any terms or provision(s) of this Development Agreement or the application of any term(s) or provision(s) of this Development Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Development Agreement or the application of this Development 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 Development 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 Development Agreement by providing written notice of such termination to City.

9.6. Section Headings.

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

9.7. Construction of Agreement.

This Development 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 Development Agreement.

9.8. Entire Agreement.

This Development Agreement is executed in ____ (__) duplicate originals, each of which is deemed to be an original. This Development Agreement consists of ____ pages including the Recitals, and three (3) exhibits and one (1) appendix, attached hereto and incorporated by reference herein, which, together with the Project Approvals, 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 Legal Description of the Property
- Exhibit B Map of the Property
- Exhibit C Walkway Improvements
- Exhibit D Landscaping and Public Outdoor Activity Improvements
- Exhibit E Impact Fees
- Appendix I Definitions

9.9. Estoppel Certificates.

Either Party may, at any time during the Term of this Development 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 Development Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Development 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 Development 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 the Community Development Director 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.

9.10. Recordation.

Pursuant to California Government Code Section 65868.5, within ten (10) days after the later of execution of the Parties of this Development Agreement or the Effective Date, the City Clerk shall record this Development Agreement with the Alameda County Recorder. Thereafter, if this Development Agreement is terminated, modified or amended, the City Clerk shall record notice of such action with the Alameda County Recorder.

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 Development 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 Development Agreement for which time is an element.

9.13. Applicable Law.

This Development 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 Development Agreement or to enforce any provision of this Development 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.

9.15. Third Party Beneficiaries.

Except as otherwise provided herein, City and Developer hereby renounce the existence of any third party beneficiary to this Development 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 Development Agreement is contained in the instrument by which such person acquired an interest in the Property.

9.17. Counterparts.

This Development 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. 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', redevelopment agencies' or other approvals have been obtained.

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

DEVELOPER:

Chang Income Property Partnership LP, San Leandro Land Series (R1), a Delaware limited partnership

By: _____
Name: _____
Title: _____

CITY:

CITY OF SAN LEANDRO
a California Charter City

By: _____
Name: Chris Zapata
Title: City Manager

ATTESTATION:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Richard Pio Roda
City Attorney

STATE OF CALIFORNIA)
) ss:
COUNTY OF ALAMEDA)

On __ ____, 201_ before me, _____(here insert name of the officer),
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

[Seal]

STATE OF CALIFORNIA)
) ss:
COUNTY OF ALAMEDA)

On __ ____, 201_ before me, _____(here insert name of the officer),
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

[Seal]

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[Attached]

EXHIBIT B

MAP OF PROPERTY

[Attached]

EXHIBIT C

WALKWAY IMPROVEMENTS

[Attached]

EXHIBIT D

LANDSCAPING AND PUBLIC OUTDOOR ACTIVITY IMPROVEMENTS

[Attached]

EXHIBIT E
IMPACT FEES

All terms not defined herein shall have the meaning ascribed to them in the Development Agreement to which this Exhibit E is attached to and a part thereof.

The following Impact Fees apply to the Project as provided in Section 2.6 of this Development Agreement:

- Development Fee for Street Improvements (DFSI) listed in Section 6.4.100 of the San Leandro Administrative Code including annual adjustments as described in Section 8.10.200 of the San Leandro Administrative Code.
- Marina/Interstate 880 Traffic Impact Fee listed in Section 6.4.100 of the San Leandro Administrative Code including annual adjustments as described in Section 8.10.300 of the San Leandro Administrative Code.
- Park Facilities Impact Fee, as applicable, listed in Section 6.4.100 of the San Leandro Administrative Code Development including annual adjustments as described in Section 8.8.150 of the San Leandro Administrative Code.
- Overhead Utility Conversion Fee, as applicable, listed in Section 6.4.100 of the San Leandro Administrative Code including annual adjustments as described in Section N.1 of the Underground Utilities District Master Plan.
- School District Fee Assessment for San Leandro or San Lorenzo School Districts, as applicable, including annual adjustments.
- Long Range Planning Fee listed in Section 6.4.100 of the San Leandro Administrative Code including annual adjustments.

The fees listed above vary with changes to the indexes listed in Table A. The values shown in table A for each index were used to calculate the current estimated fees, which are subject to change based upon the actual date of building permit application submittals per phase, shown in table B for Phase 1.

Table A

Index	Value	Published date
Consumer Price Index, all urban consumers, San Francisco-Oakland-San Jose, CA, Shelter.	\$291.139	1/16/2013
Engineering News Record Construction Cost Index for San Francisco	\$10360.84	1/7/2013
Engineering News RecordCity Cost Index	878.57	1/7/2013

Table B

Impact Fee	Fee basis	Rate based on Values in Table A
Development Fee for Street Improvement(DFSI)/Marina-I880 Traffic Impact Fee -: General Office	\$3.44 per gross building square foot	\$454,299
Marina-I880 Traffic Impact Fee - General Office	\$1.31 per gross building square foot	\$172,920
DFSI/Marina-I880 Traffic Impact Fee – Quality Restaurants	\$7.63 per gross building square foot	If applicable per phase
San Leandro School District Fee Assessment	\$0.51 per square foot	\$67,320
Long Range Planning Fee	\$0.12 per square foot	\$15,840

APPENDIX I

DEFINITIONS

AB 1600 — Section 2.6.3(b)

Administrative Amendment — Section 4.4.2

Agreement — Preamble

Agreement Date — Preamble

Applicable General Plan — Section 2.2(a)

Applicable Rules — Section 2.2(c)

Applicable Zoning Ordinance — Section 2.2(b)

Approving Ordinance – Recital O

CEQA — Recital K

City — Preamble, Section 1.1.1

City Council — Recital O

Developer — Preamble, Section 1.1.2

Development Agreement — Preamble

Development Agreement Legislation — Recital B

Effective Date — Recital O

Event of Default — Section 5.1

FEIR — Recital K

Future Rules — Section 2.4.2(a)

General Plan — Recital I

Impact Fees — Section 2.6.3

Martinez Improvements — Section 1.4.2

MMRP — Recital K

MND — Section 1.7.2

Mortgage — Section 8.1

Mortgagee — Section 8.1

Notice of Default — Section 3.5

Parties — Preamble

Party — Preamble

Phase One Improvements – Section 1.4.3

Phase Two Improvements – Section 1.4.4

Phase Three Improvements – Section 1.4.5

Planned Development Permit — Section 1.7.4

Planning Commission — Recital N

Processing Fees — Section 2.6.2

Project — Recital F and Section 1.4

Project Approvals — Section 1.7

Property — Recital C

Public Art Fund – Section 1.4.9

Public Improvements – Section 1.4.8

State or Federal Law — Section 2.4.3

Subsequent Approvals — Section 1.7.6

Term — Section 1.3

TOD Strategy – Recital D

Transfer — Section 7.1

Vested Elements — Section 2.2

Zoning Amendment — Section 1.7.3

