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WHEN RECORDED MAIL TO:

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

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Code Sections 6103 and 27383

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DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF SAN LEANDRO

AND

CAL COAST COMPANIES LLC, INC.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Development Agreement**" or this "**Agreement**") is entered into as of _____, 2022 (the "**Agreement Date**") by and between the City of San Leandro, a California charter city organized and existing under the laws of the State of California ("**City**"), and Cal Coast Companies LLC, Inc., a Delaware corporation doing business in California as Cal Coast Developer, Inc. ("**Developer**"). City and Developer are referred to individually as "**Party**," and collectively as the "**Parties**."

RECITALS

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

A. The 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. The City and Developer seek the development of certain City-owned property consisting of approximately seventy-five (75) acres located within the City limits in the Shoreline-Marina area, as more particularly depicted in Exhibit A attached hereto (the "**Property**").

D. The City and Developer have entered into a Disposition and Development Agreement dated July 22, 2020, as amended by that certain First Amendment to Purchase and Sale Agreement and Disposition and Development Agreement dated as of March 17, 2021, and that certain Second Amendment to Purchase and Sale Agreement and Disposition and Development Agreement dated as of June 21, 2022 (as amended, the "**DDA**"), which provides for City and Developer to enter into certain land disposition agreements, leases, access agreements, construction agreements and other definitive agreements pertaining to the sale or lease of portions of the Property from City to Developer, and for construction of improvements thereon ("**DDA Implementation Agreements**"), as further described in the DDA.

E. Developer desires to develop the Property with a multi-component development that includes, but is not limited to, construction of single family residential units ("**Single Family Element**"), reconstruction of an existing golf course ("**Golf Course Element**"), construction of a hotel ("**Developer Hotel Element**"), construction of a multifamily apartment complex ("**Multifamily Element**"), construction of a restaurant ("**Developer Restaurant Element**"), construction of a market ("**Market Element**"), reconstruction of Monarch Bay Drive ("**Monarch Bay Drive Element**"), and associated infrastructure and Public Improvements

("**Infrastructure Element**") (collectively referred to herein as the "**Developer Project Elements**"). The Developer Project Elements are described more fully in the DDA and in this Agreement. Developer has also agreed to cooperate with the City in the formation of a Community Facilities District (the "**District**") under the Mello-Roos Community Facilities Act of 1982 (Government Code § 53311 *et. seq*.), with special taxes derived from the District to be used to pay for public area maintenance, public area utilities, reserves and capital expenditures for public infrastructure, and administration of the District.

F. City desires to support and facilitate the development of the Property and the Developer Project Elements in order to create new housing, lodging and restaurants, new facilities to foster economic growth, and new recreational opportunities for the public in the Shoreline-Marina area. The elements to be developed by City (collectively, the "**City Project Elements**") are described in the DDA and this Agreement, and include the design and reconstruction of Monarch Bay Park and associated publicly-accessible trail elements ("**Park Element**"); the demolition of improvements at the San Leandro Marina Harbor adjacent to the Property in conformance with plans approved by the City, the San Francisco Bay Conservation and Development Commission ("**BCDC**") and other applicable agencies ("**Harbor Element**"); the reconstruction of the Mulford-Marina Branch Library ("**Library Element**"); and the design and construction of certain improvements in the public right-of-way, which provide service and access to the Developer Project Elements and City Project Elements (the Developer Project Elements and City Project Elements are collectively referred to herein as the "**Project**").

G. City has taken several actions to review and plan for the future development of the Project ("**Project Approvals**"). These include, without limitation, the following:

1. Environmental Impact Report. Environmental Impact Report. City has undertaken, pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 *et seq*. ("**CEQA**"), the required analysis of the environmental effects that would be caused by the Project and has determined those feasible mitigation measures which will eliminate, or reduce to an acceptable level, the adverse environmental impacts of the Project. The environmental effects of the proposed development of the Property were analyzed by the Final Environmental Impact Report (the "**FEIR**"), which was recommended for adoption by the Planning Commission on June 18, 2015, and certified by Resolution 2015-125, adopted by the City Council on July 20, 2015. City has also adopted a mitigation monitoring and reporting program (the "**MMRP**") to ensure that those mitigation measures incorporated as part of, or imposed on, the Project are enforced and completed. Those mitigation measures for which Developer is responsible are incorporated into, and required by, the Project Approvals. The City adopted three addenda to the FEIR (the "**FEIR Addenda**") based upon changes in the Project after the FEIR was certified by the City Council. The first FEIR Addendum was recommended for adoption by the Planning Commission on February 6, 2020 and certified by Resolution 2020-019 adopted by the City Council on February 24, 2020. The second FEIR Addendum was recommended for adoption by the Planning Commission on April 21, 2022 and certified by Resolution 2022-083 adopted by the City Council on May 16, 2022. The third FEIR Addendum was recommended for adoption by the Planning Commission by Resolution No. 2022-003 on June 2, 2022 and certified by Resolution No. _____ adopted by the City Council on June 21, 2022.

2. General Plan Amendment. Following review and recommendation by the City Planning Commission and after a duly noticed public hearing and adoption of the FEIR Addendum, the City Council, by Resolution No. 2020-019, approved amendments to the San Leandro General Plan (the "**General Plan Amendment**") which reduced the General Commercial (CG) area west of Monarch Bay Drive from 31 acres to 16 acres, increased the Parks and Recreation (PR) designation west of Monarch Bay Drive from 7.2 acres to 15.5 acres, re-designated approximately 6.8 acres from CG to High Density Residential (RH), reduced the 30.7-acre PR area east of Monarch Bay Drive from 30.7 to 24.4 acres, and increased the Medium Density Residential (RM) acreage east of Monarch Bay Drive from 13.1 to 19.4 acres.

3. Rezoning. Following City Planning Commission review and recommendation, adoption of the FEIR Addendum and adoption of the General Plan Amendment at a duly noticed public hearing, the City Council adopted City Ordinance No. 2020-01, which amended the Zoning Map and reduced the Community Commercial (Planned Development) (CC(PD)) area west of Monarch Bay Drive from 38.2 acres to 16 acres, rezoned approximately 15.5 acres to Commercial Recreation (CR), rezoned approximately 6.8 acres from CC(PD) to Residential Multi-Family (24 dwellings per gross acre) (Planned Development) (RM-1800(PD)), reduced the Commercial Recreation (CR) area east of Monarch Bay Drive from 29.5 acres to 23.1 acres, and increased the Residential Multi-Family (22 dwellings per gross acre) (Planned Development) RM-2000(PD) acreage east of Monarch Bay Drive from 13.1 to 19.4 acres (the "**PD Zoning**") for the Project.

Concurrently with the approval to enter into this Development Agreement, the City is approving the following land use approvals, entitlements and permits relating to the Project ("**Project Approvals**"):

4. Vesting Tentative Tract Map. Following review and recommendation by the City Planning Commission and after a duly noticed public hearing, the City Council, by Resolution No. 2022-083, approved Vesting Tentative Tract Map 8633 for development of the western portion of the Project (the "**Vesting Tentative Tract Map**").

5. Project Entitlements. Following review and recommendation by the Planning Commission following a duly noticed public hearing, the City Council, by Resolution No. _____, approved the Developer Project Entitlements, including Site Plan Review and Planned Development Project (the "**Project Entitlements**").

H. After entering into this Development Agreement, the City anticipates applications for additional land use approvals, entitlements, and permits to be submitted to implement and operate the Project in accordance with the terms of the DDA and consistent with the Project Approvals. Such applications may include, without limitation: design review approvals, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, subdivision maps, permits, resubdivisions, and any amendments to, or repeal of, any of the foregoing (collectively, "**Subsequent Approvals**"). When any Subsequent Approval applicable to the Project is approved by the City, each such Subsequent Approval(s) shall become subject to all the terms and conditions of this Development Agreement and shall be considered part of the "Project Approvals" under this Development Agreement.

I. City has determined that the Project provides certain public benefits and opportunities which are advanced by City and Developer entering into this Agreement. This Agreement will, among other things:

1. provide for the construction of high quality single family and multifamily housing units that will satisfy a portion of City's share of the regional housing needs,

2. provide dining and hospitality opportunities for residents of the City and their families and guests in a scenic area of the City,

3. provide revenues necessary for City to remove outdated materials and infrastructure in the marina and the associated parking area and create a new Park Element in order to remove blight and provide recreational opportunities for City residents,

4. provide revenues necessary for City to reconstruct the Mulford-Marina Branch Library in order to enhance library resources and services for City residents,

5. provide for the upgrading and reconstruction of Monarch Bay Road and a variety of other roads, trails, and other infrastructure projects in the Shoreline-Marina area of the City,

6. reduce uncertainties in planning and provide for the orderly development of the Project;

7. ensure that 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;

8. mitigate many significant environmental impacts;

9. strengthen the City's economic base with a variety of long-term jobs, in addition to shorter term construction jobs;

10. provide for and generate substantial revenues for the City in the form of tax revenues (including real property taxes and assessments, sales and use taxes, utility user taxes, transient occupancy taxes, City business license taxes, and 911 taxes), sales proceeds, ground rents, fees, exactions and other fiscal benefits; and

11. otherwise achieve the goals and purposes for which the Development Agreement Legislation was enacted.

J. In exchange for the benefits to City described in the preceding Recital H, together with the other public benefits that will result from the development of the Project, Developer will receive by this Agreement assurance that it may proceed with the Project in accordance with the "**Applicable Law**" (as defined herein), and therefore desires to enter into this Agreement. The Parties intend that the provisions of this Agreement related to vested rights and land uses will apply only to those portions of the Property that are conveyed to Developer in fee or by long-

term ground lease, upon and after the date of the fee or ground lease conveyance, and shall not be applicable to those portions of the Property which have not been acquired or ground leased by Developer.

K. Pursuant to California Government Code §65865, City has adopted procedures and requirements for the consideration of development agreements (City Administrative Code, Title 5 Community Development, Chapter 4 Development Agreements). This Agreement has been processed, considered and executed in accordance with such procedures and requirements.

L. On June 2, 2022, the City of San Leandro Planning Commission (the "**Planning Commission**"), the initial hearing body for purposes of development agreement review, following a duly noticed public hearing, recommended approval of this Development Agreement pursuant to Resolution No. 22-372.

M. On _____, 2022, the San Leandro City Council (the "**City Council**"), after conducting a duly noticed public hearing, has found that this Agreement is consistent with the General Plan and has conducted all necessary proceedings in accordance with the City's rules and regulations for the approval of this Agreement. 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 _____, 2022 (the "**Effective Date**").

N. 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 I
DEFINITIONS

1.1. "**Agreement**" shall have that meaning set forth in the Introductory Paragraph of this Agreement.

1.2. "**Agreement Date**" shall have that meaning set forth in the Introductory Paragraph of this Agreement.

1.3. "**Administrative Amendment**" shall have that meaning set forth in Section 6.6 of this Agreement.

1.4. "**Affiliate**" shall have that meaning set forth in Section 9.1(d) of this Agreement.

1.5. "**Annual Review**" shall have that meaning set forth in Section 5.1 of this Agreement.

1.6. "**Applicable General Plan**" means the City's General Plan as of the Agreement Date, as described in Section 4.4(a) of this Agreement.

1.7. "**Applicable Law**" means the rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) governing permitted uses, building locations, timing of construction, densities, design, and heights in force and effect on the Effective Date of this Agreement.

1.8. "**Applicable Rules**" shall have that meaning set forth in Section 4.4(C) of this Agreement.

1.9. "**Applicable Zoning**" means the Zoning Ordinance of the City as of the Agreement Date, as described in Section 4.4(b) of this Agreement.

1.10. "**Assignment and Assumption Agreement**" shall have that meaning set forth in Section 9.1(b) of this Agreement.

1.11. "**BCDC**" shall mean the San Francisco Bay Conservation and Development Commission.

1.12. "**CC&Rs**" means the declaration of covenants, conditions and restrictions to be established for the Single Family Element as described in Section 3.17 of this Agreement.

1.13. "**CEQA**" means the California Environmental Quality Act, Public Resources Code Section 21000, *et seq*.

1.14. "**Certificate of Occupancy**" means a final certificate of occupancy issued by the City Department of Building & Safety which certifies that a commercial space or newly constructed residential building has been inspected for compliance with the California Building Standards Code and local ordinances which govern construction and occupancy.

1.15. "**City**" means the City of San Leandro, a California charter city, with offices located at 835 East 14th Street, San Leandro, CA 94577-3767.

1.16. "**City Council**" means the San Leandro City Council.

1.17. "**City Project Elements**" means the elements of the Project to be developed by City as set forth in Recital F of this Agreement.

1.18. "**Commence Construction**" means a building permit has been issued for the applicable work of improvement and substantial work under the permit has begun.

1.19. "**DDA**" shall have that meaning set forth in Recital D of this Agreement.

1.20. "**DDA Implementation Agreements**" shall have that meaning set forth in Recital D of this Agreement.

1.21. "**Developer**" means Cal Coast Companies LLC, Inc., a Delaware corporation doing business in California as Cal Coast Developer, Inc., a Delaware corporation with offices located at 12301 Wilshire Blvd. Suite 620, Los Angeles, California 90025. "Developer," as used in this Development Agreement, includes any permitted assignee or successor-in-interest as herein provided.

1.22. **"Developer Acquired Property"** shall mean those portions of the Property that Developer actually acquires in fee or by ground lease from City. Developer Acquired Property shall not include those portions of the Property that Developer has entered into an agreement to acquire from City, prior to the close of escrow or commencement of the ground lease from City for such portion of the Property.

1.23. "**Development Agreement Legislation**" shall have that meaning set forth in Recital B of this Agreement.

1.24. "**Developer Hotel Element**" shall have that meaning set forth in Recital E of this Agreement.

1.25. "**Developer Project Elements**" means the elements of the Project to be developed by Developer as set forth in Recital E of this Agreement.

1.26. "**Developer Restaurant Element**" shall have that meaning set forth in Recital E of this Agreement.

1.27. "**Developer Western Elements**" means the Developer Project Elements to be located to the west of Monarch Bay Drive, including the Developer Hotel Element, Multifamily Element, Developer Restaurant Element, Market Element, and Park Promenades.

1.28. "**DFSI**" means the Development Fees for Street Improvements as described in Section 3.19(l) of this Agreement.

1.29. "**District**" shall have that meaning set forth in Recital E of this Agreement.

1.30. "**Effective Date**" shall have that meaning set forth in Recital L of this Agreement.

1.31. "**Event of Default**" shall have that meaning set forth in Section 7.11 of this Agreement.

1.32. "**Extension**" shall have that meaning set forth in Section 2.2 of this Agreement.

1.33. "**FEIR**" means the Final Environmental Impact Report for the Property as described in Recital G.

1.34. "**FEIR Addendum**" means the Addendum to Final Environmental Impact Report for the Property as described in Recital G.

1.35. "**Final Completion**" means the project is fully closed out and no actions remain. All deficiencies are addressed, the warranty period is complete, and all contracts are closed. The

contractor has completed all of its contractual obligations and no longer has any role with the in-service assets.

1.36. "**Force Majeure Events**" shall have that meaning set forth in Section 11.2 of this Agreement.

1.37. "**Future Rules**" shall have that meaning set forth in Section 4.7(a) of this Agreement.

1.38. "**General Plan**" means the General Plan adopted by the City described in Recital H(7).

1.39. "**General Plan Amendment**" means the General Plan Amendment adopted by the City as described in Recital G(2).

1.40. "**Golf Course Element**" shall have that meaning set forth in Recital E of this Agreement.

1.41. "**Golf Course Parcel**" shall have that meaning set forth in Section 3.3 of this Agreement.

1.42. "**Harbor**" means the San Leandro Marina Harbor, as described in Section 4.3 of his Agreement.

1.43. "**Harbor Element**" shall have that meaning set forth in Recital F of this Agreement.

1.44. "**HOA**" means the homeowners association to be established for the Single Family Element as described in Section 3.17 of this Agreement.

1.45. **"Horizontal Improvements"** means improvements to the underlying land and infrastructure before the Vertical Improvements can be installed and constructed. This includes installation of onsite and offsite utilities, including, but not limited to sanitary sewer, storm drain, water, natural gas, electricity and fiber optic internet service.

1.46. "**Hotel Promenade**" shall have that meaning set forth in Section 3.4 of this Agreement.

1.47. "**Infrastructure Element**" shall have that meaning set forth in Recital E of this Agreement.

1.48. "**Impact Fees**" means impact fees, linkage fees, exactions, assessments or fair share charges or other similar impact fees or charges imposed on and in connection with new development by the City to address impacts of development pursuant to rules, regulations, ordinances and policies of the City. Impact Fees do not include (i) Processing Fees and Charges, or (ii) other City fees, charges or assessments not imposed to address impacts of development.

1.49. "**Labor Peace Agreement**" means the labor peace agreement for the operation of the Developer Hotel Element as described in Section 3.23 of this Agreement.

1.50. "**Library Element**" shall have that meaning set forth in Recital F of this Agreement.

1.51. "**Market Element**" shall have that meaning set forth in Recital E of this Agreement.

1.52. "**Mello-Roos Act**" shall have that meaning set forth in Section 3.28 of this Agreement.

1.53. "**MMRP**" means the mitigation monitoring and reporting program adopted by the City in connection with its approval of the FEIR and FEIR Addendum, as the MMRP may be revised by the City.

1.54. "**Monarch Bay Drive Element**" shall have that meaning set forth in Recital E of this Agreement.

1.55. "**Mortgage**" shall have that meaning set forth in Section 10.1 of this Agreement.

1.56. "**Mortgagee**" shall have that meaning set forth in Section 10.1 of this Agreement.

1.57. "**Multifamily Element**" shall have that meaning set forth in Recital E of this Agreement.

1.58. "**Multifamily Promenade**" shall have that meaning set forth in Section 3.4 of this Agreement.

1.59. "**Notice of Compliance**" shall have that meaning set forth in Section 9.4 of this Agreement.

1.60. "**Park Element**" shall have that meaning set forth in Recital F of this Agreement.

1.61. "**Park Parcel**" shall have that meaning set forth in Section 4.2 of this Agreement.

1.62. "**Park Promenades**" shall mean the Hotel Promenade and Multifamily Promenade.

1.63. "**Party**" and "**Parties**" shall mean the City and Developer as set forth in the Introductory Paragraph of this Agreement.

1.64. "**PD Zoning**" is described in Recital G(3).

1.65. "**Planning Commission**" means the San Leandro Planning Commission.

1.66. **"Post-Closing PSA Requirements"** means those Seller's Conditions Precedent to Closing for the Single Family Element that may be satisfied after the date of the Closing in lieu of being satisfied before the Closing, as defined in the DDA, as amended.

1.67. **"Post-Commencement Ground Lease Requirements"** means those City's Ground Lease Commencement Conditions Precedent that may be satisfied after the Effective Date of the applicable Ground Lease in lieu of being satisfied before Lease Commencement, as defined in the DDA, as amended.

1.68. "**Processing Fees and Charges**" means administrative fees and charges imposed by the City for a development project, including, but not limited to, fees for land use applications, project permits, building applications, building permits, grading permits, encroachment permits, tract or parcel maps, lot line adjustments, street vacations, certificates of occupancy and other similar permits and fees and charges for staff time, including legal counsel fees, relating to work on a development project. Processing Fees and Charges shall not include Impact Fees.

1.69. "**Project**" means, collectively, the Developer Project Elements and City Project Elements.

1.70. "**Project Approvals"** and **"Project Entitlements**" shall have those meanings set forth in Recital G of this Agreement.

1.71. "**Project Labor Agreement**" means the project labor agreement for the construction of the Developer Hotel Element" as described in Section 3.21 of this Agreement.

1.72. "**Property**" means the approximately seventy-five (75) acres located within the City limits in the Shoreline-Marina area, as more particularly depicted in Exhibit A and described in Exhibit B, consisting of the following:

(a) Parcel A – Library and Golf Course.

(b) Parcel B - Single Family Element.

(c) Parcel C - Existing Pump Station.

(d) Parcel D - Existing Water Treatment Plant.

(e) Parcel E - Existing Restaurant.

(f) Parcel F - Existing Hotel.

(g) Parcel G - Multifamily Housing.

(h) Parcel H - Developer Hotel.

(i) Parcel I - Developer Restaurant.

(j) Parcel J – Market.

(k) Parcel K – Park and Harbor Basin.

1.73. "**Public Art**" and "**Public Art Fund**" shall have those meanings described in Section 3.14 of this Agreement.

1.74. "**Public Improvement Agreement**" means the Public Improvement Agreement or Agreements to be entered by the Parties as described in Section 3.2 of this Agreement.

1.75. **"Public Improvements"** means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

1.76. "**Reserved Powers**" means existing or future City laws, regulations, rules and policies which apply to the Project or Property and are not subject to the vested rights granted under this Agreement. The Reserved Powers include, but are not limited to, the power to enact and implement laws, rules, regulations, and policies after the Effective Date that may be in conflict with the Applicable Laws, which either (1) prevent or remedy conditions which the City has found to be injurious or detrimental to the public health or safety; (2) are Uniform Codes; (3) are necessary to comply with state and federal laws, rules and regulations (whether enacted previous or subsequent to the Effective Date) or to comply with a court order or judgment of a state or federal court; (4) are agreed to or consented to by Developer; (5) involve the formation of assessment districts, Mello-Roos Community Facilities Districts, special districts, maintenance districts or other similar districts formed in accordance with Applicable Laws; provided, however, that Developer shall retain all its rights with respect to such districts pursuant to all Applicable Laws subject to Section 3.28 below; or (6) are the adoption, periodic revisions or inflation adjustments to generally applicable Processing Fees and Charges; the adoption, periodic revisions or inflation adjustments to generally applicable Impact Fees; or the adoption, periodic revisions or inflation adjustments to Citywide fees or charges applicable to similarly situated properties or uses; provided that such fees or charges are not imposed in violation of the express limitations set forth in this Agreement.

1.77. "**Single Family Element**" shall have that meaning set forth in Recital E of this Agreement.

1.78. "**Site Preparation**" shall have that meaning set forth in Section 3.8 of this Agreement.

1.79. "**State or Federal Law**" shall have that meaning set forth in Section 4.8 of this Agreement.

1.80. "**Subsequent Approvals**" shall have that meaning set forth in Recital H of this Agreement.

1.81. "**Substantial Completion**" means the stage in the progress of the work where the work or designated portion is sufficiently complete in accordance with the contract documents so that the owner of the work can occupy or utilize the work for its intended use. The City or its designated representative shall determine in its sole discretion when Substantial Completion is achieved and will issue a list of remaining items of work (Punch List) in the issuance of the Notice of Substantial Completion that must be completed and accepted before Final Completion.

1.82. "**TDM**" means the City's Transportation Demand Management program, as described in Section 3.27 of this Agreement.

1.83. "**Term**" shall have that meaning set forth in Section 2.1 of this Agreement.

1.84. "**Vertical Improvements**" means the construction of buildings, structures (including foundations), landscaping, lighting, streets, sidewalks, curb and gutter, parking areas, stormwater bioretention treatment areas, and other improvements to be constructed or installed on or in connection with the development of the Project.

1.85. "**Vested Elements**" shall have that meaning set forth in Section 4.4(e) of this Agreement.

1.86. "**Vesting Tentative Tract Map**" shall have that meaning set forth in Recital G of this Agreement.

ARTICLE II
EFFECTIVE DATE AND TERM

2.1. Term of the Agreement. The term ("**Term**") of this Development Agreement shall commence upon the Effective Date and continue in full force and effect for a period of ten (10) years, unless earlier terminated or extended 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.

2.2. Extension of Term. The Term may be extended by up to five (5) years upon Developer's written request and City Manager's approval in his or her reasonable discretion (the "**Extension**"), provided (i) this Development Agreement has not been terminated before the initial Term expires, (ii) Developer is in compliance with the terms and conditions of this Development Agreement, the DDA (including all items required by the DDA Schedule of Performance to be complete at such time), and the DDA Implementation Agreements, at the time of the Extension, (iii) Developer has Substantially Completed the construction of all of the attached and detached for sale units in the Single Family Element (including the affordable housing component), (iv) Developer has Substantially Completed the construction of the Multifamily Element, and (v) Developer provides City with written notice of Developer's request for the Extension at least one hundred eighty (180) days prior to the date the initial Term expires.

2.3. Extension of Term Due to Litigation. In the event that litigation is filed by a third party (defined to exclude City and Developer, their respective successors and assigns, or any assignee or transferee of Developer) which seeks to invalidate this Agreement or any of the Project Approvals or Subsequent Approvals, the term of this Agreement shall be extended for a period equal to the length of time from the time a summons and complaint and/or petition are served on the defendant(s)/respondent(s) until the resolution of the matter is final and not subject to appeal; provided, however, that the total amount of time for which the term shall be extended as a result of any and all litigation shall not exceed three (3) years.

ARTICLE III
OBLIGATIONS OF DEVELOPER

3.1. Obligations of Developer Generally. The parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Developer's agreement to perform and abide by its covenants and obligations, as set forth herein. The parties further acknowledge and agree that Developer's obligations set forth in this Agreement are in addition to Developer's agreement to perform all the mitigation measures identified in the MMRP, all conditions of approval imposed on Project Approvals or Subsequent Approvals, and all obligations of Developer under the DDA and the DDA Implementation Agreements. The Project is expected to be built over several phases in response to existing market conditions and demand, availability of financing, interest rates, competition and other similar factors over the Term of the Agreement. Notwithstanding the foregoing, certain portions of the Project are required to be performed and completed in the earliest phases of the Project, including without limitation demolition, soil surcharge, mass grading, and installation of riprap in areas in and adjacent to the Park Element and the Monarch Drive Element in order to facilitate the City's construction of the Park Element and to expedite the construction of certain roadway and public infrastructure as necessary for public use of the Property and surrounding areas. In order to ensure that all development of the phases of the Project occurs in a manner that is compatible with the infrastructure needs and environmental mitigation responsibilities of the Project, all of Developer's obligations under this Article III shall be performed in accordance with the DDA Schedule of Performance.

3.2. Public Improvement Agreements. Developer and City shall enter into one or more Public Improvement Agreements in substantially the form of Exhibit C attached hereto (the "**Public Improvement Agreement**") regarding the construction of Public Improvements throughout the Project. The Public Improvement Agreement shall require that the work performed thereunder is in compliance with the Prevailing Wage Laws, as defined in Section 1.6.1 of the DDA. The Public Improvement Agreement for the Golf Course Element shall require that the construction contract for such improvements include one year of maintenance of improvements in order to ensure establishment of landscaping.

3.3. Golf Course Element. In the event that Developer acquires the Single Family Parcel from City, Developer shall redesign and reconstruct, at Developer's sole expense, a nine-hole parkland style par 3 golf course located on that portion of the City's Monarch Bay Golf Club Marina Golf Course in accordance with the requirements of Section 1.4.2 of the DDA.

3.4. Park Element. Developer shall be responsible for the construction of the portions of the Park Element located along the San Francisco Bay shoreline, adjacent to the Developer Hotel Parcel ("**Hotel Promenade**") and on the Multifamily Parcel ("**Multifamily Promenade**") (collectively referred to herein as the "**Park Promenades**"), in accordance with Sections 1.4.3 and 1.4.4 of the DDA, and as shown on the Shoreline Responsibility Map of the DDA (Exhibit R to the DDA), except as modified herein. Such development work shall include all necessary improvements, including Site Preparation as described herein and all underground infrastructure and surface improvements necessary for the construction of the Park Promenades. Surface improvements shall include the construction of a multiuse trail within such area as required and approved by BCDC, including the integration of an Emergency Vehicle

Access within the construction of the Bay Trail adjacent to the Developer Hotel Element as defined by, and/or modified by, Fire Department requirements and approvals. Surface improvements shall also include, but are not limited to, all walkways, viewing stations, overlooks, hardscape (concrete, asphalt, decomposed granite), planters, planter walls, benches and other FF&E, structures, kiosks, restrooms, picnic areas, water quality detention areas, trees, shrubs, irrigation, ground cover, and 90 days' plant establishment and maintenance. Developer shall provide City with all owner's manuals, warranties, training, as-built documents and attic stock. Developer shall design all Multifamily and Developer Hotel Elements in such a way as to maintain public access to the Park Promenades as may be required by BCDC. City and Developer shall mutually agree upon a budget for such improvements. Developer shall be eligible for credit against the Park Development Impact Fees for some or all of the foregoing work in accordance with Section 3.25 of this Agreement. If Developer subsequently projects that the costs of the public facilities will exceed the amount of the Park Development Impact Fees eligible for credit pursuant to Section 3.25, Developer may notify City that it desires to discuss modifications to the project and budget in order to reduce the cost of such improvements, and/or finance a portion of the improvements through the Community Facilities District, public grants or other financing mechanisms, and City and Developer shall thereupon meet and confer with each other with respect to such matters.

3.5. Harbor Element. Developer shall be responsible for the cost of relocating the Wes McClure public boat launch located on the outside of the Harbor from its current location to Pescador Point in accordance with Section 1.4.9 of the DDA, as further described herein. The cost of relocating the boat launch to be funded by Developer shall include all work as required to remove the existing boat launch and restore the remaining area, install the boat launch at the new location and prepare the area for boat service.

The cost to remove the existing boat launch and restore the remaining area shall include demolition (including removal of rip rap, docks, concrete, utilities, and landscaping), dredging as needed, grading (cut and/or fill), installation of rip rap, relocation of utilities, Storm Water Pollution Protection Plan (SWPPP), sea level rise mitigation, rough and finish grading (cut and/or fill), relocation of utilities as required, landscaping, and any other work required to replace the current boat launch area with a levee in line with existing infrastructure and in accordance with plans as approved by all agencies having jurisdiction and in coordination with the City.

The cost to install the boat launch at the new location at Pescador Point and prepare the area for boat service shall include demolition as may be required for a new boat launch, dredging, SWPPP, sea level rise mitigation, rough and finish grading, underground utilities, mechanical, electrical, plumbing (MEPs), fire protection, installation of rip rap, sea walls, piles, concrete ramp, gangways and docks, non-motorized water craft launching docks, and any other appurtenances as may be required for a fully functioning boat launch. Existing boat launch materials may be relocated to the new boat launch location, subject to suitability and approval of BCDC, the City, and any other applicable agencies. Such work shall comply with the approved plans and scope as approved by BCDC, the City, and any other applicable agencies.

3.6. Monarch Bay Drive Element. Developer shall be responsible for design, expansion, and reconstruction of Monarch Bay Drive in accordance with the requirements of

Section 1.4.10 of the DDA, the DDA Scope of Development, DDA Schedule of Performance and Shoreline Responsibility Map of the DDA. Construction of Monarch Bay Drive shall include, but not be limited to, Site Preparation as described in the Infrastructure Element, construction of a two lane road with appropriate left turn lanes, a class I bicycle facility, parking, sidewalks, new curb-to-curb pavement, striping, new signage, median island and landscaping, storm drains and catch basins, storm water treatment, ADA wheelchair ramps, irrigation, new and/or modified utilities, undergrounding of utilities (including utility stub outs for future phases and Park Element), lighting, pedestrian and transit amenities, and construction of a traffic circle at Monarch Bay Drive and Mulford Point Drive, and sea level rise mitigation to ensure the City's critical infrastructure is protected. The Monarch Bay Drive Element shall include work on Marina Boulevard up to and including the intersection at Fairway Drive.

Access to existing properties and their respective parking lots shall be maintained at all times. Developer shall be responsible for any repair and renovation of existing parking lots, driveways, entrances, striping, patching, curb and gutter, landscaping and irrigation that may be required due to impacts related to the Project to provide a code compliant and usable parking lot for existing properties. Developer shall be eligible for credit against the City Development Impact Fees for some or all of the foregoing work in accordance with Section 3.25 of this Agreement.

3.7. Infrastructure Element. Developer shall be responsible for all Site Preparation for the Developer Project Elements, Park Promenades and boat launch, as well as for Site Preparation, design and reconstruction of portions of Mulford Point and Pescador Point Drives and the Park Element Parking Lot in accordance with the requirements of Section 1.4.11 of the DDA. Hotel Promenade and Multifamily Promenade infrastructure shall include all required soil import, surcharging, rough grading, extension of rip rap, and any other work required for establishing proper grades and mitigating sea level rise in accordance with and approvals by all agencies having jurisdiction. Developer shall be eligible for credit against the City Development Impact Fees for some or all of the foregoing work in accordance with Section 3.25 of this Agreement.

3.8. Site Preparation. Developer shall be responsible for all site preparation required for development of each of the Developer Project Elements, as well as the Park Promenades and boat launch ("**Site Preparation**"). Site Preparation shall include demolition of existing hardscape improvements, including but not limited to asphalt pavement, concrete sidewalk, curb, gutter, buildings, and other improvements, tree removal, flood plain and sea level rise mitigation, including provisions for sea level rise protection of City's critical infrastructure, surcharging, geotechnical mitigation, and rough grading in accordance with the DDA Scope of Development, DDA Schedule of Performance, and Shoreline Responsibility Map (Exhibit R) of the DDA.

Upon Final Completion of Site Preparation, Developer shall obtain certification of a finished building pad. For Developer Project Elements in which Developer has completed the Site Preparation, but has not Commenced Construction of Vertical Improvements, Developer shall secure the site in compliance with all applicable City and other public agency requirements, and take necessary measures to ensure that the site is clean, clear and screened, including the placement of appropriate fencing and informational project signage. Developer shall ensure that the site is secure from trespassers and meets the foregoing property maintenance standards on an

ongoing basis, including the removal of nuisance vegetation and providing security personnel as may be required. Developer shall be eligible for credit against the City Development Impact Fees for some or all of the foregoing work in accordance with Section 3.25 of this Agreement.

3.9. Eastern Portions of Mulford Point and Pescador Point Drives. Developer shall be responsible for design and reconstruction of the portions of Mulford Point and Pescador Point Drives, which are located south of the Developer Hotel Element and to the north of the Multifamily Element, in accordance with the DDA Scope of Development, DDA Schedule of Performance, and the Shoreline Responsibility Map (Exhibit R) to the DDA. Such improvements shall include, but are not limited to, sidewalks, new curb-to-curb pavement, striping, new signage, landscaping, irrigation, new and/or modified utilities, undergrounding of overhead utilities, lighting, stormwater treatment, and pedestrian amenities, subject to final review and approval by the City Engineering and Transportation Director. Developer shall maintain access to existing Mulford Point Drive until the new road is constructed and operational. Developer shall be responsible for any restoration of existing parking lots, driveways, entrances, striping, patching, curb and gutter, landscaping and irrigation that may be required due to impacts related to the Project to provide a code compliant and usable parking lot for existing properties that are not a part of the Project.

3.10. Park Element Parking Lot and Western Portion of Mulford Point Drive. Developer shall be responsible for design and construction of portions of Mulford Point Drive located to the west of the Developer Hotel Element and the shared Park Element Parking Lot located to the west of the Developer Hotel Element and the Developer Restaurant Element, in accordance with Section 1.4.11 of the DDA, the DDA Scope of Development, the DDA Schedule of Performance, and the Shoreline Responsibility Map (Exhibit R) of the DDA. City shall provide conceptual drawings for the Park Element Parking Lot. Developer shall be responsible for the preparation of design development drawings and construction drawings, obtaining City and other governmental permits and approvals, and construction of the Park Element Parking Lot. Work shall include, but is not limited to: demolition, Site Preparation, including surcharging, sea level rise mitigation, rough and finish grading (cut/fill), underground utilities, curb cuts, paving sections, landscaping and irrigation, trees, water detention areas, SWPPP, concrete, curb and gutter, asphalt, decomposed granite, site lighting, site water, clarifiers, signage, striping, pay stations, and any other elements as may be required for the development of a fully functioning public parking lot. This work shall also include all necessary connections to Mulford Point Drive between the Park Element Parking Lot and Monarch Bay Drive. Developer shall be eligible for credit against the City Development Impact Fees for some or all of the foregoing work in accordance with Section 3.25 of this Agreement.

3.11. Property Level and Soil Exportation. In accordance with the requirements of Section 1.4.17 of the DDA, and Mitigation Measure HYDRO-7 of the MMRP, the Developer Project Elements must meet City engineering requirements related to flood plain and sea level rise, with such requirements and the site engineering plans subject to approval of the City Engineering and Transportation Director. In accordance with Mitigation Measure HYDRO-7, the Project shall be designed to be resilient to a mid-century sea level rise projection. If the Project would remain in place longer than mid-century, an adaptive management plan shall be developed to address the long-term impacts that would arise. The results of the risk assessment shall be incorporated into the site design. Such plans shall include provisions related to surcharge

and raising the level of the Property in accordance with technical recommendations and approved plans.

An acceptable method of fulfilling the adaptive management plan required by Mitigation Measure HYDRO-7 is to design structures to be resilient to the 2070 sea level rise projection and establish a funding mechanism to address capital improvements necessary for future adaptation to sea level rise. As such, Developer has agreed to participate in Community Facilities District financing which will address future sea level rise improvements. Developer Project Element structures on the Property are to be designed to be resilient to a 2070 sea level rise projection of 3.5 feet above Base Flood Elevation as defined by the Medium-High Risk Aversion scenario in the 2018 State of California Sea Level Guidance. The minimum finish floor elevation to meet the base flood elevation plus sea level rise to 2070 is 13.5 NAVD88, unless alternate approved means are approved by the City Engineering and Transportation Director. Future elevation plans shall be submitted in NAVD88.

Upon the approval of City, Developer shall deposit its available excess soil on the portion of the Park Parcel that is the responsibility of the City in accordance with City plans and as described and depicted in the Shoreline Responsibility Map (Exhibit R) of the DDA, provided that City shall have the right to disapprove the importation of excess soil to the Park Parcel which the City determines is not necessary. Developer shall not be obligated to import additional soil in order to make such deposits on the portion of the Park Parcel that is the responsibility of the City. Developer's deposit of soil shall be in accordance with the requirements of Section 2.7 of the DDA and the DDA Scope of Development, including the parties' execution of a right of entry agreement which protects City from defects in the condition of the deposited soil and provides for the testing of soil to confirm that there are no contaminants or similar unsuitable constituents and the stabilization of the soil deposited on the Park Parcel. Deposit of soil shall include proper SWPPP, access lanes, be in accordance with geotechnical recommendations for use for future grading operations, and include all necessary chain of custody documentation related to the nature of the material. City and Developer shall use good faith efforts to coordinate and make compatible the construction schedules for the City's construction of the Park Element with Developer's deposit of excess soil on the Park Element.

3.12. Construction Phasing. Developer's construction of the Developer Project Elements and City's construction of the City Project Elements shall be performed in compliance with the DDA Schedule of Performance and the Shoreline Responsibility Map (Exhibit R) to the DDA. Except as otherwise provided in the DDA Schedule of Performance and DDA Scope of Development, construction of the Project shall occur in a continuous rolling phase. Developer shall cause the Final Completion of the Site Preparation, as required in the Infrastructure Element, for all of the Developer Project Elements in the initial phase of the Project as further specified in the Schedule of Performance of the DDA. Developer shall cause the Final Completion of all Public Improvements, including the Monarch Bay Drive Element, and construction of portions of Mulford Point Drive and Pescador Point Drive and the Park Element Parking Lot, in conjunction with construction of adjacent Elements, in accordance with the times set forth in the DDA Schedule of Performance. The Single Family Element housing may be developed in multiple phases subject to market conditions, subject to the requirements of the DDA Schedule of Performance.

3.13. Construction Management. Developer shall submit to the City for its approval, which shall not be unreasonably withheld, a Construction Management Plan for each Developer Project Element in accordance with Section 2.1.5 of the DDA. Each such Construction Management Plan shall address, at a minimum, the phasing of construction, construction traffic and delivery of soil and building materials, noise issues, and other related issues. The Construction Management Plan shall include a provision for personnel responsible for receiving and addressing noise and traffic inquiries and complaints from the community.

3.14. Public Art. Developer shall finance and place public art at appropriate locations on the Property ("**Public Art**"). The actual cost of such Public Art shall be not less than one percent (1%) of the total permit valuation for the Project, in a minimum total cumulative amount of Two Million Dollars ($2,000,000). Eligible expenses for Public Art include: art and artist selection process, site preparation, design, acquisition and/or construction of the art works. City is responsible for maintenance of all public art located on the Property. City may provide for the costs thereof to be payable by a community facilities district or another entity designated by the City. The location of the Public Art on the Property shall be mutually agreed to by the City and Developer. In lieu of funding on-site Public Art, Developer may fulfill all or a portion of its requirements under this Section by making a payment calculated as one percent (1%) of the total construction budget for the Project, payable for each Developer Project Element prior to issuance of the first building permit for Vertical Improvements for such Developer Project Element, to be deposited by City into a public art fund managed by the City (the "**Public Art Fund**"). The Public Art Fund shall be used by City exclusively for eligible expenses for Public Art on the Property in conformance with Section 1.4.13 of the DDA.

3.15. Sustainability. Developer shall perform the mitigation measures adopted by the City with respect to the impacts of the Project, including those related to greenhouse gas emissions and traffic, and shall install the facilities and improvements necessary to perform such mitigation measures, as set forth in the mitigation measures in the FEIR, the MMRP adopted by the City, and any amendments thereto and subsequent requirements of CEQA, all in accordance with Section 1.4.16 of the DDA. In addition to the required mitigation measures and Building Code requirements, Developer shall obtain a Leadership in Energy and Environmental Design (LEED) Certified rating for Building Design and Construction from the U.S. Green Building Council (USGBC) for the Developer Hotel and Multifamily Elements. Outdoor landscaping on the Single Family Element shall also utilize tertiary treated recycled water (grey water) from the San Leandro Water Pollution Control Plant, subject to availability and final City approval. Developer shall install the facilities and improvements necessary to utilize such recycled water. The scope of and responsibility for such facilities and improvements shall be set forth in an approved Public Improvement Agreement.

3.16. Mitigation Monitoring and Reporting Program (MMRP). Developer shall be solely responsible for conducting and paying for all mitigation and reporting measures applicable to the Developer Project Elements that are identified in the MMRP in accordance with Section 1.8 of the DDA.

3.17. Homeowner Association. Developer hereby agrees to form a homeowner association ("**HOA**") and adopt a declaration of covenants, conditions and restrictions ("**CC&Rs**") for the Single Family Element in accordance with Section 1.4.1 of the DDA.

3.18. BCDC Approvals. In accordance with Section 2.1.1 of the DDA, Developer shall apply for and obtain all necessary permits and authorizations from BCDC that are required for the Developer Project Elements, if any are so required. Developer shall provide and maintain all access to San Francisco Bay, and satisfy all other conditions of approval, as may be required by BCDC with respect to the Developer Project Elements.

3.19. Fees To Be Paid by Developer. The Developer shall pay all applicable categories of City fees, including without limitation the following:

(a) Permit and Processing Fees. Developer shall pay to City all applicable permit and plan checking fees for all improvements as set forth in the City's then current codes. Permit fees shall be calculated pursuant to the City's then current fee schedule.

(b) Planning Processing Fees and Charges. Developer shall pay to City planning permit fees and charges at the rate in effect at the time a completed application for Subsequent Approvals is submitted to the City.

(c) Long Range Planning Fees. All development, including residential and commercial uses, shall be subject to, the Long Range Planning Fees as adopted in the City in place at the time of building permit issuance.

(d) City Environmental Services Fees and Charges. Developer shall pay any applicable fees and charges for City environmental services including, but not limited to, Hazardous Materials Storage, Storage Tank Installation, Hazardous Waste Generators, Wastewater Pretreatment, and identified Miscellaneous Services.

(e) City Inclusionary Housing Fees. In accordance with Section 1.4.1 of the DDA, the Single-Family Element shall be subject to all of the requirements of the City's Inclusionary Housing Ordinance (San Leandro Zoning Code section 6-3000, et seq.), which requires fifteen percent (15%) of the units to be restricted to occupancy by moderate income or low-income households, unless an alternative means of compliance is approved in accordance with Section 6-3016. As an alternate means of compliance, Developer shall provide not less than six percent (6%) of the units as workforce housing, restricted to sale at a price affordable to households earning up to 135% of the Area Median Income, and provide not less than four percent (4%) of the units as moderate income housing, restricted to sale, at a price affordable to households earning up to 120% of the Area Median Income, and pay an in lieu fee equal to $10 per square foot of all Single Family Element residential gross floor area (exclusive of garage and off-street parking areas, decks and patios), multiplied by the remaining percentage of the required inclusionary housing units, divided by fifteen (15). For example, if Developer elects to satisfy the Inclusionary Housing Ordinance by performing the minimum required amount of construction of workforce housing and moderate income housing, and constructs exactly six percent (6%) of the units as workforce housing, and constructs exactly four percent (4%) of the units as moderate income housing, the remaining percentage of the required inclusionary housing units would be five percent (5%), and the in lieu fee would be $10 per square foot of all Single Family Element residential gross floor area (exclusive of garage and off-street parking areas, decks and patios), multiplied by one-third (5 divided by 15)). The method of compliance with the Inclusionary Housing Ordinance is set forth in the Single Family Parcel Purchase and Sale

Agreement and shall be described in greater detail in an Inclusionary Housing Plan approved by the City and an Inclusionary Housing Agreement to be executed by Developer and City with respect to the Single Family Element pursuant to Section 6-3014 of the City Zoning Code.

(f) Park Development Impact Fees. Developer shall pay to City any required Park Development Impact Fees for the residential portion of the Project. However, Developer may receive a credit toward the Park Development Impact Fee in an amount equal to the actual cost incurred by Developer for materials and labor for any required construction of Park Element facilities in accordance with Section 3.25 hereof.

(g) Overhead Utility Conversion Fees for Streets in Underground Utility District Master Plan. Developer shall underground all existing above-ground utilities within the Developer Project Elements instead of paying applicable fees therefor.

(h) Sanitary Sewer Connection Fees. Developer shall pay fees based on the estimated average day of peak month discharge in effect at the time of the sewer connection, consistent with all applicable City laws.

(i) Sanitation Services. Developer shall pay applicable Sanitation Services Fees in effect at the time the services are provided.

(j) Alameda County Department of Environmental Health Fees. Developer shall pay any applicable fees for plan review and associated charges imposed by the Environmental Protection Division of the Alameda County Department of Environmental Health.

(k) School District Fees. Developer shall pay any applicable school district fees to the San Leandro Unified School District or San Lorenzo Unified School District, as applicable.

(l) Development Fees for Street Improvements ("DFSI"). The DFSI fee shall be based on the fee amounts in place at the time a building permit is issued, with credit against the full fee amount granted for the actual cost incurred by Developer for materials and labor for any required dedicated improvements, in accordance with Section 3.25 hereof.

3.20. Taxes to be Paid by Developer. Developer shall pay and collect all taxes applicable to the Project, including without limitation including real property taxes and assessments, possessory interest taxes on property ground leased from City, sales and use taxes, utility user taxes, transient occupancy taxes, City business license taxes, and 911 taxes.

3.21. Project Labor Agreement. Prior to the conveyance of the applicable properties through sale or execution of leases, the Developer shall enter into and comply with a Project Labor Agreement for the Single Family, Developer Hotel, Multifamily, Developer Restaurant, and Market Elements in accordance with Sections 1.4.3, 1.4.4, 1.4.5, and 1.4.6 of the DDA and Section 7.9 of the Single-Family Parcel Purchase and Sale Agreement.

3.22. Local Hiring Requirements. Developer shall comply with the local hiring requirements of Section 1.6.3 of the DDA.

3.23. Labor Peace Agreement. Prior to execution of the Developer Hotel Ground Lease, Developer shall enter into and comply with a Labor Peace Agreement as provided in Section 5.4 of the Developer Hotel Ground Lease.

3.24. Prevailing Wages. If and to the extent required by applicable federal and state laws, rules and regulations, Developer and its contractors and subcontractors shall pay prevailing wages for all construction, alteration, demolition, installation, and repair work performed with respect to the construction of the Project as required herein and described in the Scope of Development attached to the DDA, in compliance with Section 1.6 of the DDA.

3.25. Calculation of Credits Against Development Impact Fees. Developer shall be eligible for credit against the City Development Impact Fees for the Public Improvements described below in paragraphs (a) through (d) of this Section 3.25. Creditable costs shall include underground improvements necessary for the functionality of surface improvements, including water, sewer, storm drain, electrical power, gas, telecommunications, and irrigation. Creditable costs shall also include surface improvements and any other above ground improvements required for the construction of the applicable public facilities, including asphalt, decomposed granite, concrete, curb and gutter, subgrade engineering (gravel or base), ground cover, drip irrigation, landscaping, signage, plumbing fixtures, light fixtures, vertical elements, walls, fences, and gates. Site Preparation, as described in this Section 3.25, shall not be eligible for Development Impact Fee Credit.

If Developer constructs a public facility that has been designated by this Development Agreement to be eligible for a credit against City Development Impact Fees, the amount of the credit shall be determined as follows. The credit amount shall mean the actual costs paid by Developer to contractors, consultants and other third parties for the materials and construction of the underground improvements and surface improvements for the applicable public facility, and plans and permit and other fees charged by government agencies other than City. Costs of improvements initially paid for by Developer but reimbursed to Developer through a Community Facilities District or other funding mechanism shall not be eligible for a credit against City Development Impact Fees. The credit amount shall not include any compensation for Developer profit or overhead in connection with the construction of the improvement. In the event that the contractor or consultant for the work of improvement is Developer or an affiliate of Developer, the credit for the amount payable to the contractor or consultant shall not exceed a reasonable market rate for such work. In the event that the costs of the public facility exceed the amount of the applicable Development Impact Fees, the amount of the credit shall not exceed the amount of the applicable Development Impact Fee, and the Developer shall not receive a credit or reimbursement of any kind for the overage. The foregoing credits are intended to implement the Development Impact Fee Credit requirements of Sections 1.4.3, 1.4.4, 1.4.10, and 1.4.11 of the DDA and the DDA Scope of Development, and in the event of any inconsistencies between this Section 3.25 and the DDA, the provisions of this Section 3.25 shall control.

Developer shall be eligible for credit against the City Development Impact Fees for the following public facilities described below in the areas, and in such proportions, as provided on the Shoreline Responsibility Map, Exhibit R to the DDA:

(a) Boat Launch: A credit against the applicable Park Facilities Development Impact Fee, in an amount equal to the actual cost incurred by Developer for materials and labor (including costs of third party consultants and contractors), plans, and permit and other fees charged by government agencies other than City, for applicable underground improvements and surface improvements required for the restoration of the area from which the boat launch is being removed.

(b) Hotel Promenade and Multifamily Promenade: A credit against the applicable Park Facilities Development Impact Fee, in an amount equal to the actual cost incurred by Developer for materials and labor (including costs of third party consultants and contractors), plans, and permit and other fees charged by government agencies other than City, for applicable underground improvements and surface improvements required for construction of the Hotel Promenade and Multifamily Promenade.

(c) Park Element Parking Lot and Western Portion of Mulford Point Drive: A credit against the applicable Park Facilities Development Impact Fee, in an amount equal to half (50%) of the actual cost incurred by Developer for materials and labor (including costs of third party consultants and contractors), plans, and permit and other fees charged by government agencies other than City, for any required underground improvements and surface improvements required for construction of the western portion of Mulford Point Drive and the Park Element parking lot.

(d) Monarch Bay Drive: A credit against the applicable Development Fee for Street Improvements, in an amount equal to the actual cost incurred by Developer for materials and labor (including costs of third party consultants and contractors), plans, and permit and other fees charged by government agencies other than City, for any required underground improvements and surface improvements to the western half of Monarch Bay Drive that directly abuts the existing Horatio's Restaurant and Marina Inn Hotel.

3.26. Timing of Development. 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. Accordingly, it is the Parties' intent to cure that deficiency by acknowledging and providing that, subject to any timing requirements in the DDA, DDA Schedule of Performance, and DDA Implementation Agreements, and any infrastructure phasing requirements that may be required by the Project Approvals, and subject to certain approvals required for issuance of a Certificate of Occupancy, Developer shall have the right (without obligation) to develop the Developer Acquired Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment.

3.27. Transportation Demand Management (TDM). In accordance with Section 1.4.16 of the DDA and Mitigation Measure TRAF-2A of the MMRP, Developer agrees to implement the approved TDM Program to reduce vehicle trips generated by the Project. Prior to the issuance of Building Permits, the Developer and City shall agree to Transportation Demand Management ("TDM") measures for the Developer Elements with a trip reduction goal of 10% for daily trips and 20% for peak-hour trips. Measures shall include, at a minimum, a shuttle

service, in coordination with Oakland International Airport's Assistant Aviation Director, that operates between the Project site and key locations such as the San Leandro BART station and Oakland International Airport that will be made available to all of the land uses within the Shoreline development. The final TDM Plan shall specify responsible parties to administer each measure and enforcement provisions.

3.28. Community Facilities District. Developer shall cooperate with City in the formation of a community facilities district or districts by the City pursuant to the Mello Roos Community Facilities District Act of 1982 (Gov. Code §§ 53311–53368.3) (the "Mello-Roos Act") in accordance with Section 1.5 of the DDA. Without limitation of the foregoing, the Developer acknowledges and agrees as follows:

(a) Formation of CFD; Estimated Maximum Total Tax Rate. The CFD is anticipated to be formed prior to the conveyance of the Property from the City to the Developer. Accordingly, the City is anticipated to be the sole landowner-voter in connection with the formation of the CFD. The Special Tax shall be established for the CFD in an amount, determined in the sole discretion of the City, that is sufficient to finance all or a portion of the Public Improvements (via CFD bonds and/or pay as you go) and services determined necessary by the City for the Project that are authorized to be financed under the Mello-Roos Act, pursuant to a rate and method of apportionment prepared by the City's special tax consultant; provided, that the estimated total annual taxes and assessments to be levied on each taxable parcel within the CFD shall not exceed (i) with respect to Single Family Element residential parcels, __% of the parcel's projected assessed valuation based on a reasonable estimate of the sale price thereof, and (b) with respect to the Developer Hotel Element, Multifamily Element, Developer Restaurant Element and Market Element, $_____ per square foot. The special tax shall include an annual escalator and shall have no sunset date.

(b) Financing Public Improvements; Reimbursement of Expenses. The CFD may finance the design, acquisition and/or construction of Public Improvements necessary for development of the Project, which will include a share of the City's estimated future sea level rise mitigation costs, that are eligible for financing under the Mello-Roos Act, some of which Public Improvements may be constructed by the City and some of which may be constructed by the Developer. Bonds are expected to be issued by the CFD to finance Public Improvements eligible for financing under the Mello-Roos Act, as determined by the City, in consultation with the City's bond counsel, financial advisor and/or underwriter and subject to prevailing bond market conditions. The timing and amount of CFD bonds, if any, sold to finance the Public Improvements, and the prioritization of funding any particular Public Improvements, shall be in the sole discretion of the City. The parties agree that in connection with the issuance of CFD bonds, if any, to finance Public Improvements constructed and/or paid for by Developer to be acquired by the City, Developer and the City will enter into a funding and acquisition agreement in a form reasonably acceptable to the City's bond counsel setting forth, among other things, the requirements for and mechanism by which the Developer would be reimbursed. The Parties may also be reimbursed from CFD special taxes and/or CFD bond proceeds for any costs advanced in connection with the formation of the CFD, the issuance of any CFD bonds and related CFD costs, in the sole discretion of the City.

(c) Financing Public Services. The CFD may finance services attributable to the new development that are eligible for financing under the Mello-Roos Act, in the amounts determined in the sole discretion of the City.

(d) City's Reservation of Discretion. It is expressly acknowledged, understood and agreed by the Parties that the City reserves full and complete discretion with respect to the formation of the CFD, the issuance of any series of Bonds for the CFD, and the financing of facilities and services through the CFD.

(e) Developer's Cooperation; Notification to Future Purchasers. Developer agrees to cooperate with the City on any bond sale for the CFD for which information about the Developer and its development plans for the Project are requested by the City. Developer also acknowledges and agrees to provide notice to potential purchasers of land subject to the Special Tax required by applicable law, including, without limitation, Government Code Section 53341.5.

ARTICLE IV
CITY OBLIGATIONS AND GRANT OF RIGHTS TO DEVELOPER

4.1. Obligations of City Generally. The parties acknowledge and agree that Developer's agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer's decision to build the Project in the City, is a material consideration for City's agreement to perform and abide by the covenants and obligations of City, as set forth herein. All of City's obligations hereunder shall be performed in accordance with the DDA Schedule of Performance.

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

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

and all necessary permits and authorizations from BCDC that are required for the Park Element. The final design for the Park Element shall be approved by the City in its sole discretion and approved by BCDC. City and Developer shall use good faith efforts to coordinate and make compatible the construction schedules for the City's construction of the Park Element with Developer's construction of Project Elements adjacent to the Park Element.

4.3. Harbor Element. The City shall be responsible for performing demolition within the San Leandro Marina Harbor ("**Harbor**") adjacent to the Property in order to make a clean, aesthetically appropriate and environmentally sound environment, at City's expense. The City's obligation to cause the demolition within the Harbor is expressly made contingent upon the close of escrow for the conveyance of the Single Family Parcel from City to Developer pursuant to the Single Family PSA between City and Developer. The demolition within the Harbor shall be in conformance with the Scope of Development as set forth in the DDA. The final plan for the Harbor demolition shall be approved by the City in its sole discretion and approved by BCDC. Subject to compliance with the DDA Scope of Development, public trust requirements and all Applicable Laws, City has sole discretion of the extent of the demolition within the Harbor. Notwithstanding the foregoing, Developer shall, at its sole cost and expense, relocate the Wes McClure public boat launch located on the outside of the Harbor from its current location to Pescador Point, as further described in this Agreement. City and Developer shall use good faith efforts to coordinate and make compatible the construction schedules for the City's construction of the Harbor Element with Developer's construction of Project Elements adjacent to the Harbor Element.

4.4. Vested Rights. City hereby grants to Developer the vested right to develop the Project on the Developer Acquired Property, including all on-site and off-site improvements required in connection with the Developer Acquired Property, as authorized by and in accordance with, the Project Approvals. Such rights shall be subject to the City's Reserved Powers and the following requirements; provided that the vested rights set forth in this Section 4.4 shall apply only to the Developer Acquired Property upon and after the date of the Developer's acquisition of the Developer Acquired Property, and shall not be applicable to those portions of the Property that have not been acquired in fee or ground leased by Developer. The permitted uses of the Developer Acquired Property, the minimum and maximum density, number of commercial, retail and residential 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 Developer Acquired 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 Developer Acquired Property on the Agreement Date, except for any and all

fees applicable to the development (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 upon Developer's consent.

(e) The foregoing 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.

4.5. 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 Developer Acquired Property, either prior to or after Developer's acquisition of the Developer Acquired 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 Developer Acquired Property to the extent such moratorium or other limitation is in conflict with this Agreement; provided, however, the provisions of this Section 4.5 shall not affect City's compliance with moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria or other limitations.

4.6. Effect of Project Approvals and Applicable Rules; Future Rules. Except as otherwise explicitly provided in this Development Agreement, development of the Developer Acquired Property shall be subject to (a) the Project Approvals and (b) the Applicable Rules.

4.7. 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 consistent with the City's Reserved Powers or are otherwise 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 Developer Acquired 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 4.8 below; (iv) it consists of changes in, or new fees permitted by this Development Agreement; or (v) it is a Reserved Power or 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.

4.8. 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 Construction 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.

4.9. Changes in Uniform Codes. Notwithstanding any provision of this Agreement to the contrary, the Project shall be constructed in accordance with the provisions of the Uniform Building, Mechanical, Plumbing, Electrical and Fire Codes, City standard construction specifications, and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the applicable building, grading, encroachment or other construction permits for the Project.

4.10. 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.

4.11. 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 Article 4), and compliance with CEQA. Where such substantial conformity/compliance exists, City shall not deny an application for a Subsequent Approval for the Project. 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. Developer desires to retain the ability to apply for either a single lot or multiple lot subdivision for each component of the Single Family Element, and City shall reasonably consider and shall not unreasonably withhold approval of Developer's subdivision applications and parcel maps for the Single Family Element.

4.12. Life of Project Approvals and Subdivision Maps.

(a) Life of Tentative Map. The terms of any tentative map for the Developer Acquired 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.

(b) Life of Other Project Approvals. The term of all other Project Approvals, including without limitation any Planned Development Permit, 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.

(c) 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).

4.13. Further CEQA Environmental Review.

(a) Reliance on Project FEIR. The FEIR and FEIR Addendum, which have been adopted by City as being in compliance with CEQA, addresses the potential environmental

impacts of the entire Project as it is described in the Project Approvals. It is agreed that, in acting on any discretionary Subsequent Approvals for the Project, City shall rely on the FEIR and FEIR Addendum to satisfy the requirements of CEQA to the fullest extent permissible by CEQA and City shall not require a new initial study, negative declaration, EIR or subsequent or supplemental FEIR, or addendum to the FEIR unless required by CEQA and shall 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.

(b) 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.

4.14. 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 or changes in seismic requirements. 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 V
ANNUAL REVIEW

5.1. Annual Review. The annual review required by California Government Code Section 65865.1 ("**Annual Review**") shall be conducted for the purposes and in the manner stated in those laws as further provided herein. As part of the Annual 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.

5.2. Commencement of Process; Developer Compliance Letter. At least fifteen (15) business 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.

5.3. 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.

5.4. 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 applicable cure periods referred to in Sections 5.5 and 7.1 herein.

5.5. 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 ninety (90) days and shall extend the ninety (90) 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.

5.6. 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.

5.7. Delivery of Documents. At least five (5) business 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 noncompliance with this Development Agreement.

5.8. City Council Compliance Finding. If the City Council, following a noticed public hearing pursuant to Section 5.6, 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.

5.9. City Council Noncompliance Finding. If the City Council, at a properly noticed public hearing pursuant to Section 5.6, 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 shall 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 sixty (60) 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 7 herein.

5.10. Relationship to Default Provisions. The above procedures supplement and do not replace that provision of Section 7.4 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 7.4.

ARTICLE VI
AMENDMENTS

6.1. 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.

6.2. 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. The City Manager shall have authority to approve minor amendments to this Development Agreement on behalf of the City, but shall refer major amendments, as determined by the City Manager's sole judgment, to the City Council for approval.

6.3. 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 and acting in good faith, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section 6.3 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 6.2 above. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City.

6.4. 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 6.2 herein).

6.5. Amendments to Project Approvals. Project Approvals (except for this Development Agreement the amendment process for which is set forth in Section 6.2) 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 Article 4. All amendments to the Project Approvals shall automatically become part of the Project Approvals and shall be considered Administrative Amendments as set forth in Section 6.6, 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 Development Agreement and the Project Approvals, including, but not limited to, the permitted uses of the Developer Acquired Property, the minimum and maximum density and amount of square feet allocated to commercial and retail space or residential 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 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 Article 6. City shall not request, process or consent to any amendment to the Project Approvals that would affect the Developer Acquired Property or the Project without Developer's prior written consent, which shall be reasonably considered by the Developer in good faith.

6.6. Administrative Amendments. 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, variations in the design (including, but not limited to, architectural details, materials, and signage) 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.

6.7. City Approvals of Amendments and Other Actions. The City shall maintain the authority to approve amendments pursuant to this Article 6 and to otherwise implement this Development Agreement through the City Manager (or designee). The City Manager (or designee) shall have the authority to enter into amendments of this Development Agreement on behalf of the City, to make and execute further agreements, make approvals, issue interpretations, and/or waive provisions hereof, so long as such actions do not materially or

substantially change the uses or construction permitted on the Property, or materially or substantially add to the costs incurred or to be incurred by the City as specified herein, or materially or substantially reduce the revenue earned or to be earned by City, and such amendments, further agreements, interpretations, and/or waivers may include extensions of time to perform as specified in the DDA Schedule of Performance. All other material and/or substantive amendments, agreements, interpretations or waivers shall require the consideration, action and written consent of the City Council. Notwithstanding the foregoing, the City Manager shall maintain the right to submit to the City Council for consideration or action any matter under the City Manager's authority if the City Manager desires to do so. The City Manager may delegate some or all of his or her powers and duties under this Agreement to one or more management level employees of the City.

6.8. 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 VII
DEFAULT, REMEDIES AND TERMINATION

7.1. Events of Default. Subject to any extensions of time by mutual consent of the Parties in writing, and subject to the provisions of Section 11.2 hereof regarding permitted delays and a Mortgagee's right to cure pursuant to Section 10.3 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 ninety (90) days (such ninety (90) day period is not in addition to any ninety (90) day cure period under Section 5.5, if Section 5.5 is applicable) following written notice of default from the other Party, where such failure is of a nature that can be cured within such ninety (90) day period, or (ii) if such failure is not of a nature which can be cured within such ninety (90) day period, the defaulting Party does not within such ninety (90) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

Any notice of default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Event of Default, all facts constituting substantial evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this 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.

7.2. Meet and Confer. During the time periods specified in Section 7.1 for cure of a failure of performance, the Parties shall meet and confer in a timely and responsive manner, to attempt to resolve any matters prior to litigation or other action being taken, including without limitation any action in law or equity; provided, however, nothing herein shall be construed to extend the time period for this meet and confer obligation beyond the 90-day cure period referred to in Section 7.1 (even if the 90-day cure period itself is extended pursuant to Section 7.1(ii)) unless the Parties agree otherwise in writing.

7.3. Remedies and Termination. If, after notice and expiration of the cure periods and procedures set forth in Sections 7.1 and 7.2, the alleged Event of Default is not cured, the non-defaulting Party, at its option, may institute legal proceedings pursuant to Section 7.4 of this Development Agreement and/or terminate this Development Agreement pursuant to Section 7.6 herein. In the event that this Development Agreement is terminated pursuant to Section 7.6 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.

7.4. Legal Action by Parties.

(a) 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.

(b) 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.

7.5. Effect on Remedies in DDA and Conveyance Agreements. Nothing in this Development Agreement shall modify any rights or remedies the Parties may have under the DDA or DDA Implementation Agreements.

7.6. Termination.

(a) 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 2.

(b) 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.

(c) 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 5 herein or this Article 7 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 VIII
COOPERATION AND IMPLEMENTATION

8.1. 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.

8.2. Timely Submittals By Developer. Developer acknowledges that City cannot expedite processing Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its

obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary required materials as set forth in the Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to process to final action any and all Subsequent Approvals.

8.3. Timely Processing By City. Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval application including, without limitation, (i) providing at Developer's expense and subject to Developer's request and prior approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such Subsequent Approval application. City shall ensure that adequate staff is available, and shall authorize overtime staff assistance as may be necessary, subject to Developer payment of applicable City planning permit fees and charges at the rate in effect at the time of the completed application, to timely process such Subsequent Approval application.

8.4. 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, commission, committee, or department, it shall not take any action that conflicts with City's obligations under this Agreement unless required to by any State or Federal law.

8.5. 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 such permits and approvals, provided that, nothing herein shall require the City to expend any funds on such efforts and Developer shall reimburse the City for any costs relating to these efforts.

8.6. Cooperation in the Event of Legal Challenge.

(a) 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.

(b) 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 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 Development Agreement.

8.7. Revision to Project. In the event of a court order issued as a result of a successful legal challenge, City shall, after exhausting all appeals and to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as 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.

8.8. 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.

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

ARTICLE IX
TRANSFERS AND ASSIGNMENTS

9.1. Right to Assign.

The Parties understand and anticipate that Developer may seek to transfer or assign its interests, rights and responsibilities under this Development Agreement to third parties acquiring an interest or estate in the Developer Acquired Property or any portion thereof with respect to one or more specific Elements of the Project, including without limitation purchasers or lessees of lots, parcels or facilities subject to the terms of this Article 9.

(a) Process for City Approval of Transfer. Prior to any Transfer hereunder, Developer shall submit to City detailed written information regarding the proposed transferee's development experience as relevant to the proposed Transfer, detailed information with respect to the financial capacity of the proposed transferee, and the form of a proposed assignment and assumption agreement which requires the assignee to comply with the assigned sections of this Development Agreement. Upon receipt of Developer's submission City may request further information regarding the experience and financial capacity of the proposed transferee, and such requests shall not be considered an unreasonable withholding or delay of the City's consent. The City may refuse to give its consent if, in light of the proposed transferee's reputation and financial resources or other reasons, such transferee would not in City's reasonable opinion be able to fully and completely perform the obligations proposed to be assumed by such transferee. The determination made by the City Manager is appealable by Developer to the City Council.

(b) Assignment and Assumption Agreement. Any such assignment made in compliance with this Section 9.1 shall be evidenced by a written assignment and assumption agreement in a form approved by the City Attorney, which agreement shall set forth in detail the assignee's specific duties under this Development Agreement.

(c) Change of Ownership. In addition to the foregoing, prior to the Final Completion of the Project, except as expressly permitted by this Development Agreement, Developer shall not undergo any significant change of ownership without the prior written approval of City, which approval shall not be unreasonably withheld, conditioned or delayed. For purposes of this Development Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than fifty percent (50%) in aggregate of the present ownership and /or control of Developer, taking all transfers into account on a cumulative basis; provided however, neither the admission of investor limited partners, nor the transfer of beneficial or ownership interests by an investor limited partner to subsequent limited partners shall be restricted by this provision, nor shall the admission of a Passive Investor Member nor the transfer of a beneficial or ownership interest by a Passive Investor Member to another Passive Investor Member be restricted by this provision. "Passive Investor Member" means a member who pursuant to Developer's operating agreement is not authorized to actively manage or otherwise operate the business of the company.

(d) Transfer to Affiliates. Notwithstanding anything to the contrary contained in this Section 9.1, Developer may Transfer, in whole or in part, the Developer Acquired Property, the Project, or this Development Agreement to any "Affiliate" of Developer, without the prior written approval of City. As used herein, the term "**Affiliate**" means, with respect to Developer, (a) any person or entity who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Developer, or (b) any individual or entity in which Developer has a 50.1% or more beneficial interest. A person or entity shall be deemed to control a person or entity if it has the power to direct the management,

operations or business of such person or entity. The term "beneficial owner" is to be determined in accordance with Rule 13d promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended.

9.2. Release upon Transfer. Upon the Transfer of Developer's rights and interests under this Development Agreement pursuant to Section 9.1, and recordation of the Assignment and Assumption Agreement in the Clerk-Recorder's Office of Alameda County, Developer shall automatically be released from its obligations and liabilities under this Development Agreement with respect to that portion of the Developer Acquired 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) City has consented to the Transfer, and (ii) the transferee executes and delivers to City an assignment and assumption agreement in accordance with Section 9.1(b) hereof, and (iii) Developer is not in Default under this Agreement as of the effective date of the Transfer. Upon any transfer of any portion of the Developer Acquired Property and the express assumption of Developer's obligations under this Development Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Development Agreement as such provisions relate to the portion of the Developer Acquired Property acquired by such transferee. A default by any transferee shall only affect that portion of the Developer Acquired 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 Developer Acquired 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 Developer Acquired Property owned by such transferor/transferee, and any amendment to this Development Agreement between City and a transferor or a transferee shall only affect the portion of the Developer Acquired 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 9.3 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Development Agreement.

9.3. Covenants Run with the Land, Binding on Successors and Assigns. 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 Developer Acquired 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 Developer Acquired Property hereunder (i) is for the benefit of such Developer Acquired Property and is a burden upon such Developer Acquired Property, (ii) runs with such Developer Acquired Property, (iii) is binding upon each Party and each successive owner during its ownership of such Developer Acquired Property or any portion thereof, and (iv) each person or entity having any interest therein derived in any manner through any owner of such Developer Acquired Property,

or any portion thereof, and shall benefit the Developer Acquired Property hereunder, and each other person or entity succeeding to an interest in such Developer Acquired Property.

9.4. Notice of Compliance Generally. Either Party may, at any time, 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, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, (c) the requesting Party is not in Default in the performance of its obligations under this Agreement, or if in Default, to describe therein the nature and amount of any such Default; and (d) such other information as may reasonably be requested. A Party receiving a request hereunder shall execute and return such certificate within forty-five (45) days following the receipt thereof. In the event that the Party receiving the request hereunder fails to return such certificate within forty-five (45) days, the requesting party may commence the default procedures described in Section 7.1. The Community Development Director shall have the right to execute any certificate requested by Developer hereunder. Developer shall have the right at Developer's sole discretion, to record the Notice of Compliance.

ARTICLE X
MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE

10.1. Mortgagee Protection. This Agreement shall not prevent or limit Developer in any manner, at Developer's sole discretion, from encumbering the Developer Acquired 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 Developer Acquired Property ("**Mortgage**"). This Development Agreement shall be superior and senior to any lien placed upon the Developer Acquired 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 Developer Acquired Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

10.2. Mortgagee Not Obligated. Notwithstanding the provisions of Section 10.1 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 Developer Acquired 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.

10.3. 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.

10.4. No Supersedure. Nothing in this Article 10 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 10 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 10.3.

ARTICLE XI
MISCELLANEOUS PROVISIONS

11.1. 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.

11.2. Force Majeure. The Term of this Development Agreement and the Project Approvals and the time within which City and 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, delays of governmental agencies (except that delays of City shall not excuse delay of performance by City), changes in local, state or federal laws or regulations, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services that prevents, prohibits or delays construction of the Improvements, enemy action, civil disturbances, wars, terrorist acts, pestilence or epidemics, fire, earthquakes, floods, storm surges, unavoidable casualties, litigation involving this Agreement, or bankruptcy, insolvency or defaults of Project lenders or equity investors, or a governmentally declared emergency or disaster ("**Force Majeure Events**"). Any extension of time for Force Majeure Events shall be for a reasonable period, not to exceed twenty-four (24) months, and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Unless caused by the Force Majeure Events described above, delays for any other reasons, including without limitation delays due to inability to obtain financing, or other general economic conditions, shall not constitute events of force majeure pursuant to this Development Agreement; provided that City may approve extensions of time for such reasons upon the request of Developer, in City's sole discretion. Such extension(s) of time shall not constitute an Event of Default and shall occur at

the request of any Party. In addition, the Term of this 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.

11.3. 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, 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 11.3.

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

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

Developer: Cal Coast Companies LLC, Inc.
12301 Wilshire Boulevard, Suite 620
Los Angeles, CA 90025
Attn: Edward J. Miller

with copies to: Nicholas F. Klein, Esq.
12301 Wilshire Boulevard, Suite 620
Los Angeles, CA 90025

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and

received on the first to occur of (i) actual receipt by any of the addresses designated above as the Party to whom notices are to be sent, or (ii) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by overnight courier service as provided above shall be deemed to have been received twenty-four (24) hours after the date of deposit. Notices delivered by electronic facsimile transmission shall be deemed received upon receipt of sender of electronic confirmation of delivery, provided that a "hard" copy is delivered as provided above.

11.4. 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.

11.5. 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.

11.6. 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.

11.7. 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.

11.8. Entire Agreement. This Development Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Development Agreement consists of seventy-two (72) pages including the Recitals and exhibits, 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 are as follows:

Exhibit A	Map of the Property
Exhibit B	Legal Description of Property
Exhibit C	Public Improvement Agreement

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

11.10. 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.

11.11. Recordation. Pursuant to California Government Code Section 65868.5, within ten (10) days after the later of execution by the Parties of this Development Agreement or the Effective Date, the City Clerk shall submit this Development Agreement for recording by 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.

11.12. 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.

11.13. Time Is of the Essence. Time is of the essence for each provision of this Development Agreement for which time is an element.

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

11.15. 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 from the other Party.

11.16. 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.

11.17. 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 Developer Acquired 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 Developer Acquired Property.

11.18. 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.

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

SIGNATURES ON FOLLOWING PAGE

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

DEVELOPER:

CAL COAST COMPANIES LLC, INC.
a Delaware corporation doing business
in California as Cal Coast Developer, Inc.

By: _____
Edward J. Miller
Title: CEO/President

CITY:

CITY OF SAN LEANDRO
a California Charter City

By: _____
Name: Frances M. Robustelli
Title: City Manager

ATTESTATION:

By: _____
Leticia I. Miguel
City Clerk

APPROVED AS TO FORM:

By: _____
Richard M. Pio Roda
City Attorney

Signatures Must Be Notarized

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF ALAMEDA)

On __ _____, 2022 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

MAP OF PROPERTY

[To Be Inserted]

EXHIBIT B

LEGAL DESCRIPTION

[To be inserted]

EXHIBIT C

PUBLIC IMPROVEMENT AGREEMENT

PUBLIC IMPROVEMENT AGREEMENT
CITY OF SAN LEANDRO

STANDARD PUBLIC IMPROVEMENT AGREEMENT

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

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

It is mutually agreed as follows:

AGREEMENTS

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

2. Work; Satisfaction of City Engineer. All of the work on the required improvements is to be done at the places, with the materials, in the manner, and at the grades, all

as shown upon the approved plans and specifications, and to the reasonable satisfaction of the City Engineer.

3. Work; Inspections; Fees. The City Engineer or his designee shall inspect all of the improvements made pursuant hereto to determine that they comply with all City regulations. Concurrently with the execution of this agreement, the Owner shall deposit with the City the sum of ---------- DOLLARS ($___) to cover the cost of design review and inspection of the improvements. Owner hereby agrees to increase the amount of the deposit to pay City the actual cost of inspection if such costs should exceed the original deposit.

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

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

6. Location of Construction Yard. Owner agrees to locate any construction yard for the storage of equipment, vehicles, supplies and materials, or the preparation or fabrication

thereof, to be used in connection with the installation of improvements for said project or the construction of buildings therein, in such a manner so as to cause a minimum of inconvenience to persons living in the areas immediately adjacent to said project, including installation of appropriate fencing and screening, and to obtain the approval of the City Engineer as to the proposed location and standards of maintenance of the yard. Immediately upon completion of the improvements to be constructed to which this agreement refers, Owner agrees to cease using the construction yard, clear the site and restore it to its original condition, and to remove therefrom all supplies, materials, equipment, or vehicles being stored or kept thereon. Owner agrees not to use the construction yard in connection with the installation of improvements or construction of buildings elsewhere. City may extend the time within which the construction yard may be used or within which supplies, materials, equipment or vehicles may be stored or kept thereon if City shall determine that the granting of such extension will not be detrimental to the public welfare. No extension will be made except on the basis of a written application made by Owner to the City Engineer stating fully the grounds and facts relied upon for such extension.

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

8. Extension. The dates for commencement and completion of the work of construction may be extended as herein provided. The City Engineer shall extend said dates for

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

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

10. Extension; No Release of Obligations. In the event it is deemed necessary by the City to extend the time of commencement or completion of the work to be done under this Agreement beyond the dates specified herein, such extension shall in no way release any guarantee given by Owner pursuant to this Agreement, or relieve or release those providing improvement security pursuant to this Agreement. The sureties in executing the bonds shall be deemed to stipulate and agree that no change, extension of time, alteration or addition to the term of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on the bond, and to waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications.

11. Extension; Condition. The granting of any extension may be conditioned upon Owner providing City with increased Inspection Fees, a cash deposit which sum is equal to one hundred percent (100%), of the estimated cost of constructing the required improvements, and

new or amended surety bonds in amounts increased to reflect increases in the cost of constructing the required improvements that have occurred prior to the granting of the extension, and the cost of additional inspection services.

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

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

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

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

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

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

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

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

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

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

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

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

1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001.)

2. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.

3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability Insurance.

(b) Minimum Limits of Insurance. Owner shall maintain limits no less than (unless otherwise approved by the City's Risk Manager):

1. General Liability: $3,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: $2,000,000 combined single limit per accident for bodily injury and property damage.

3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of $1,000,000 per accident.

(c) Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either

the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials and employees; or the Owner shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(d) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages.

a. The City, its officers, agents, officials, employees and volunteers shall be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the owner; products and completed operations of the Owner, premises owned, occupied or used by the Owner, or automobiles owned, leased, hired or borrowed by the Owner. The coverage shall contain no special limitations on the scope of the protection afforded to the City, its officers, officials, employees or volunteers.

b. The Owner's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Owner's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

d. The Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage.

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

3. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

(e) Acceptability of Insurers. Insurance is to be placed with insurers with an A.M. Best rating of A- or better.

(f) Verification of Coverage. Owner shall furnish City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The City reserves the right to modify these insurance requirements as the best interests of the City dictate.

(g) Subcontractors. Owner and/or Owner's contractor(s) shall provide separate certificates and endorsements subject to all of the requirements stated herein.

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

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

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

temporary or permanent repairs which may be required as determined in the sole discretion and judgment of City.

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

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

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

21. Breach of Agreement; Performance by Surety or City. In the event of any such notice of breach of this Agreement, Owner's surety shall have the duty to take over and complete the work and the improvement herein specified; provided, however, that if the surety, within thirty (30) days after the serving upon it of such notice of breach, does not give City written

notice of its intention to take over the performance of the contract, and does not commence performance thereof within thirty (30) days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Owner and Owner's surety shall be liable to City for any damages and/or reasonable and documented excess costs occasioned by City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Owner as may be on the site of the work and necessary therefor.

22. Notices. All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

City Clerk
City of San Leandro
835 East 14th Street
San Leandro, CA 94577

Notices required to be given to Owner shall be addressed as follows:

[Applicant Name and Address]
Attn: _____

Notices required to be given surety of Owner shall be addressed as follows:

[Surety Name and Address]

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

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

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

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

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

CITY OF SAN LEANDRO
a Municipal Corporation

Dated: _____ By: _____
Frances M. Robustelli, City Manager

Owner(s)

Dated: _____ By: _____
Signature

_____
Print Name

_____
Title

Attach:

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

Approved as to Form:

_____
Richard Pio Roda, City Attorney

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