



**CITY OF HAYWARD**  
**AGENDA REPORT**

AGENDA DATE 09/21/99  
AGENDA ITEM 6  
WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council

**FROM:** Director of Community and Economic Development

**SUBJECT:** Vesting Tentative Map Tract 7065 and Development Agreement - Morey Greenstein, Trustee (Applicant), Gordon E. Oliver & Alden Oliver Trusts (Owners) - Request to Subdivide Approximately 251 Acres into 538 Single-Family Residential Lots, 22 Commercial/Light Manufacturing Lots, 2 Neighborhood Parks and a Sports Park; and Introduction of an Ordinance Authorizing the Execution of a Development Agreement - The Site is Located on Hesperian Boulevard Between Industrial Boulevard and Old Alameda Creek

**RECOMMENDATION:**

The Planning Commission and staff recommend that the City Council find the proposed project consistent with the Specific Plan, Program EIR and adopted mitigation measures, and approve the vesting tentative tract map and introduce the ordinance authorizing the execution of a development agreement.

**DISCUSSION:**

Background

The South of Route 92 Specific Plan and Development Guidelines adopted by City Council on February 17, 1998 provide a comprehensive set of plans, policies and implementation measures for development and conservation within the South of Route 92 area. Concurrent with adoption of the Specific Plan, the General Plan was amended to reflect the new land uses. In addition, the Zoning Ordinance was amended to add new zoning districts and regulations, and the area was rezoned and prezoned to facilitate a mixed development of business park, light manufacturing, retail and residential uses along with land for parks and open space.

In addition to approval of the Specific Plan, the program Environmental Impact Report was certified with a statement of overriding considerations based on the economic and social benefits of the Specific Plan proposal.

Voter approval of the Specific Plan was required for the change in land use designation of the Oliver West and Weber properties due to their former designation on the General Plan Map for Open Space-Baylands use. The change in land use designation was approved by the voters in the fall of 1998. A further step in the implementation process was to annex the Oliver East parcel into the City of Hayward. In May, 1999, the Local Agency Formation Commission (LAFCO) approved the annexation. The vesting tentative map is proposed as the next step in implementing the Specific Plan.

The Planning Commission reviewed the vesting tentative map and development agreement at their September 2, 1999 meeting and voted 5:2 to recommend approval. Those voting in opposition stated that the project does not promote the public welfare especially with regard to the impacts of the 18-24 month grading operation and expressed concern that the Army Corps has not yet made a determination regarding the jurisdictional wetlands. At the Planning Commission meeting 17 of the 26 citizens who spoke on the matter supported the project citing its economic and recreational benefits to the community. Other members of the public raised issues relating to potential geologic hazards, such as liquefaction, and concerns over the Bay Trail bridge connection and the effectiveness of the water buffer to protect adjacent wildlife habitat.

Should the application be approved by the City Council, the project sponsor will prepare improvement plans and a final map for approval by the City. Subsequent site plan approvals by the Planning Commission will be required for the development of each site.

### Surrounding Uses

This tentative map includes lands known as Oliver East and Oliver West, and City of Hayward property within the area of the South of Route 92 Specific Plan. The project area is generally bounded by Hesperian Boulevard to the east, Old Alameda Creek to the southeast, Industrial Boulevard to the north, Wildlife Conservation Board (WCB) lands to the west, and Cargill Salt Company lands to the south. The WCB is planning to restore and enhance the tidal marsh seasonal wetlands on their 835-acre parcel to the west, known as Eden Landing Ecological Reserve. Cargill maintains active salt production ponds on their property.

### Vesting Tentative Tract Map

The tentative map was reviewed by the Planning Commission and staff and was found to be in conformance with the project's approved Specific Plan and Development Guidelines. Much of the discussion below is reflected in these documents and the program EIR.

### *Subdivision Layout/Site Circulation*

Access to the property is provided by two primary streets connecting to Hesperian Blvd. and Industrial Boulevard. Street "A" is an east-west collector that extends from the Hesperian Blvd/Tripaldi Way intersection and terminates at a roundabout in the residential tract near a 5-acre neighborhood park. Street "B" is a north-south collector serving the commercial development and connects Industrial Blvd. with a minor collector (Street "C") serving the southerly end of the commercial development and the Sports Park. The intersections of Streets "A" and "C" on Hesperian and the intersection of Street "B" on Industrial will be signalized.

Since the easterly portion of Street "A" (east of the business park roundabout) provides access to the entire development, it will have four lanes of traffic. All other streets in the development will have two lanes of traffic with monolithic or meandering sidewalks.

The street layout within the residential tract discourages speed and cut-through traffic by incorporating several cul-de-sacs and minimizing long straight roadway sections. All of the

street cross-sections proposed are consistent with the Specific Plan for the development, including the provisions for an at-grade railroad crossing emergency access.

### ***Grading and Drainage***

The existing levees within the project boundary do not meet the minimum requirements of the National Insurance Program regulations for flood protection purposes. The proposed project will improve these levees sufficiently to remove the property from the Special Flood Hazard Area (SFHA). Levee improvement and/or floodwall construction will be subject to the approval of the Federal Emergency Management Agency (FEMA) and Alameda County Flood Control District. The project conditions include the requirement that FEMA consent to removal of the property from the SFHA prior to recordation of the first final map.

The elevation of finished grades for the tract would require a significant amount of import fill. The applicant will be required to obtain a City grading permit before importing over two million cubic yards of fill that will be needed to achieve the proposed finished grades. As described in the Program EIR, the grading operation is expected to occur six days a week for 18-24 months with 40 trucks making 10 trips per day.

Prior to the City issuing a grading permit, the developer is required to obtain a determination from the Army Corps of Engineers as to whether the project includes wetlands that come under their jurisdiction. To the extent that there are jurisdictional wetlands that would be developed by the project, the developer is required to mitigate the impact by restoring or creating the same amount of wetlands in a different location. A wetlands delineation report has been prepared and submitted to the Corps. The report indicates that there is half an acre of jurisdictional wetlands on Oliver West and approximately one quarter of an acre on the City property to be exchanged for the Sports Park. The tentative map includes a mitigation area that is more than adequate to address the loss of these wetlands. Although the Corps conducted a site visit, a final determination has not been made to date. It is anticipated that the determination will be made within the next few weeks. Approval of a mitigation plan for the wetlands is required prior to the start of filling and grading the site.

Grading and development of the site will result in a significant increase in water run-off from the site. Therefore, the project conditions include all of the mitigation measures required by the project EIR. These include construction of a new pumping station on the southwest corner of the Oliver East property, and a new drainage transmission line.

### ***Buffer Zone***

A 100-foot-wide buffer zone is proposed along the west and north property lines of the residential tract to provide protection of the habitat to the west and wetlands to the north from trespass of people and domestic pets. The bottom of the buffer will be approximately 4 feet below sea level, and the top of its side walls will have an elevation of at least 3 feet above sea level. The buffer will have salt water to a minimum depth of 3 feet at all times, and a minimum water surface of 50 feet. The buffer area will be landscaped with screening vegetation, primarily native grasses and shrubs, as determined in the Habitat Mitigation Plan.

The conditions of approval vest with the City oversight responsibility for the buffer operation and maintenance, and the ability to modify the specifications for any buffer-related contracts as is deemed appropriate or necessary. The operation and maintenance costs of the buffer will be initially performed by the developer for a a period of up to 36 months or until satisfactory performance is demonstrated. Thereafter, a maintenance district financed by property owners of both the residential tract and the business development will operate and maintain the buffer.

### ***Bay Trail***

The EIR suggested the Bay Trail be extended to Union City by utilizing the levee banks adjacent to the water buffer, however the final alignment was not determined. The proposed Bay Trail alignment incorporated in the tentative map was developed in consultation with the Association of Bay Area Governments and the East Bay Regional Park District. (See Exhibit "A" attached)

The California Department of Fish and Game (CDFG) plans to extend the Bay Trail through the Eden Landing Ecological Reserve to a pedestrian bridge proposed over the project's water buffer. Due to the sensitive nature of the Eden Landing wildlife habitat, the bridge design will be subject to the approval of CDFG and is anticipated to incorporate fencing and self-closing, self-locking gates to prevent the passage of predatory animals. The bridge will be located opposite the 5-acre neighborhood park, which will include a Bay Trail staging area. The trail will continue through the residential area, over the Street "A" overpass, along Street "B", and into the Sports Park connecting to Hesperian Boulevard. An additional staging area will be provided within the Sports Park.

### **Development Agreement**

The Development Agreement includes a provision requiring the developer to fund the design and construction of a 25-acre sports park that will provide the community with a variety of recreational opportunities. It is anticipated that the final design will include lighted game courts and ball fields for informal and league activities, a concession building, restrooms and shade structures, parking and a perimeter bicycle path. The sports park will be completed by September 1, 2001, and granted to the City. Operation and maintenance of the facility will be undertaken by HARD.

The Development Agreement also provides a 10-year time frame for completion of the entire development as delineated in the tentative map and conditions of approval. A 5-year extension of time may be granted as outlined in the agreement.

### **Environmental Review**

The proposed project is consistent with the Specific Plan, Development Guidelines and Mitigation Monitoring and Reporting Program. The proposed project and circumstances have not changed from those examined in the program EIR and no new mitigation measures are required; accordingly, additional environmental study is not required. The conditions of approval require that improvement plans and project development adhere to all the mitigation measures described in the Mitigation Monitoring and Reporting Program.

Conclusion

The proposed vesting tentative map is consistent with the adopted General Plan, Specific Plan, Development Guidelines and program EIR. Approval of the map and development agreement is the next step in implementation of the South of Route 92 Specific Plan, which will result in significant benefits to the community. A 25-acre sports park will be improved and granted to the City to provide regional recreation facilities.

Prepared by:

*for Bashir Y. Marlas*  
Cathy Woodbury, ASLA/AICP  
Principal Planner/Landscape Architect

Recommended by:

*Sylvia Ehrental*  
Sylvia Ehrental  
Director of Community and Economic Development

Approved by:

*Jesús Armas*  
Jesús Armas, City Manager

- Attachments: Exhibit A - Zoning/Area Map  
Exhibit B - Findings  
Exhibit C - Conditions of Approval  
Exhibit D - Development Agreement  
Exhibit E - School Agreement  
Exhibit F - Correspondence  
Exhibit G - Environmental Factors Evaluation  
Exhibit H - Mitigation Monitoring Plan and Reporting Program  
Exhibit I - Draft Planning Commission Minutes and  
Staff Report dated 9/2/99  
Vesting Tentative Map Tract 7065 & Conceptual Plans  
Draft Resolution(s)

9.15.99

Due to the length of the Exhibits, they are not available at the web site. The report, in its entirety, is available and on file at the Library and in the City Clerk's Office.

**DRAFT**

JB 9/15/99

mj 9/15

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION APPROVING THE VESTING TENTATIVE  
MAP FOR TRACT 7065

WHEREAS, there has been presented to the City Council of the City of Hayward a vesting tentative map application for Tract 7065 to subdivide approximately 251 acres into 538 Single-Family Residential Lots, 22 Commercial/Light Manufacturing Lots, 2 Neighborhood Parks and a Sports Park located on Hesperian Boulevard between Industrial Boulevard and Old Alameda Creek; and

WHEREAS, City of Hayward did review, process and certify a program Environmental Impact Report ("EIR") and Mitigation Monitoring Plan for the South of Route 92/Oliver & Weber Properties Specific Plan, Development Guidelines and General Plan amendment by Resolution 98-028, adopted by the City Council on February 17, 1998; and

WHEREAS, the proposed project is consistent with the above-referenced Specific Plan and Development Guidelines, and incorporates all mitigation measures adopted with the program EIR, and circumstances have not changed from those examined in the program EIR; and

WHEREAS, the City Council hereby finds and determines as follows:

1. The proposed project has been examined in light of the program EIR and it has been determined that no additional environmental documents are necessary because the project is within the scope of the program EIR and all mitigation measures have been incorporated into the project approvals, consistent with sections 15162, 15163 and 15168 of the state CEQA guidelines.
2. The vesting tentative tract map and the proposed site plan are in substantial conformance with the State Subdivision Map Act; and
3. The vesting tentative tract map and the proposed site plan substantially conform to the City's Subdivision Regulations, the General Policies Plan, and the South of 92 Specific Plan; and
4. The design of the subdivision and the proposed improvements are in conformance with the conditions of approval and will not conflict with the easements for access through, or use of, property within the subdivision; and

4. None of the findings set forth in Section 66474 of the Subdivision Map Act have been made, and the approval of the vesting tentative map is granted subject to the recommended conditions of approval; and
5. Development of the lots in conformance with the proposed conditions of approval and in compliance with City codes will mitigate any environmental or other impacts; and
6. The site is physically suitable for the type of development proposed, and upon implementation of the conditions of approval, the streets and utilities would be adequate to serve the development.

NOW, THEREFORE, BE IT RESOLVED that the Council hereby approves the vesting tentative map for Tract 7065, subject to the conditions in the attached Exhibit "A."

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 1999

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

**DRAFT** JB 9/15/99

M  
9/15

ORDINANCE NO. \_\_\_\_

AN ORDINANCE AUTHORIZING EXECUTION OF A  
DEVELOPMENT AGREEMENT WITH THE GORDON  
OLIVER ESTATE AND TRUST AND THE ALDEN  
OLIVER TRUST FOR DEVELOPMENT OF THE MOUNT  
EDEN BUSINESS AND SPORTS PARK DEVELOPMENT  
PROJECT

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Findings. The City Council incorporates by reference Resolution No. 98-028 adopted on February 17, 1998, which approves the South of 92 Specific Plan and General Plan Amendment 97-110-02, and certifies the program Environmental Impact Report for the Project. The City Council also adopts the following additional findings in support of this ordinance authorizing the execution of a Development Agreement with the Gordon Oliver Estate and Trust and the Alden Oliver Trust (Mt. Eden Development Agreement), regarding development of Trusts' property located in the City of Hayward.

- A. This ordinance is adopted pursuant to the enabling provisions of Article 9, Chapter 10 of the Hayward Municipal Code and the provisions of State law which authorize the City to enter into binding development agreements with persons having legal or equitable interests in real property for the development of their property as set forth in Government Code sections 65864 through 65869.5.
- B. Approval of the proposed Mt. Eden Development Agreement is within the scope of the program EIR prepared for the South of 92 Specific Plan in that no circumstances or changes have occurred which would trigger the need for further environmental review pursuant to the State CEQA guidelines, and the proposed project is adequately addressed in the program EIR.
- C. The proposed Mt. Eden Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan as amended by approval of GPA 97-110-02.
- D. The residential uses contemplated by the proposed Mt. Eden Development Agreement are compatible with the General Plan land use designation of "Residential-Low Density" and the "Residential- Single Family" zoning applicable to a portion of the site.
- E. The proposed Mt. Eden Development Agreement is in conformity with

public convenience, general welfare and good land use practice in that it will provide for the development of a mixed use project with low density residential, commercial/retail, business park, light manufacturing and planning/research uses while providing for open space park and recreational uses as well.

- F. Existing or proposed public facilities have sufficient capacity to accommodate the proposed development.
- G. The public health, safety, and general welfare will be promoted and advanced by the proposed development in that traffic will be controlled through street layout and installation of traffic signals, bicycle paths and lanes will be provided, and the project includes construction of two neighborhood parks, extension of the Bay Trail, and a 25-acre community sports park.
- H. The orderly development of the property as well as preservation and enhancement of property values will be promoted and advanced by the proposed development in that development will occur along two established arterial roadways across from developed properties, and the proposed uses and physical layout of the development are consistent with the applicable zoning district requirements.

Section 2. Authorization of Mt. Eden Development Agreement. Based on the findings set forth in this ordinance and a review of the proposed Mt. Eden Development Agreement attached as Exhibit "A" hereto, the City Council hereby takes the following actions:

- A. On and after the effective date of this ordinance, the City Manager is authorized to execute a Development Agreement with The Gordon Oliver Estate and Trust and the Alden Oliver Trust regarding the Mt. Eden Business and Sports Park development proposal described in the South of 92 Specific Plan and current application Vesting Tentative Tract Map approval substantially in the form of the proposed development agreement attached as Exhibit "A" hereto, together with such further changes as are approved by the City Manager after consultation with the City Attorney.
- B. The City Manager is also authorized to take such further actions which he or she deems necessary and proper to carry out and or monitor performance of the terms of the executed Mt. Eden Development Agreement pursuant to applicable law and regulation. This authority includes but is not limited to execution of any further agreement which the City Manager deems necessary to implement the Mt. Eden Development Agreement

("Implementation Agreement").

Section 3. Effective Date of Ordinance. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

Section 4. SEVERANCE. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_ day of \_\_\_\_\_, 1999, by Council Member\_\_\_\_\_ .

ADOPTED at a regular meeting of the City Council of the City of Hayward held the \_\_\_\_ day of \_\_\_\_\_, 1999, by the following votes of members of said City Council.

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City Clerk  
City of Hayward  
777 "B" Street  
Hayward, California 94541-5007

(Space above this line for Recorder's Use)

**MOUNT EDEN BUSINESS AND SPORTS PARK**  
**COMMUNITY DEVELOPMENT AGREEMENT**

THIS AGREEMENT ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_, 1999, by and between THE GORDON OLIVER ESTATE AND TRUST, THE ALDEN OLIVER TRUST, and the CITY OF HAYWARD, a municipal corporation, organized and existing under the Hayward City Charter and laws of the State of California.

**RECITALS**

This Agreement is entered into based upon the following facts:

- A. Each of the capitalized terms used in these Recitals has the meaning defined in Section 1 of this Agreement.
- B. Government Code Sections 65864-65869.5 authorize City to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, in order to, among other things: (1) encourage and provide for the development of public facilities in order to support the development of new housing; (2) provide certainty in the approval of development projects in order to avoid the waste of resources and the escalation in the cost of housing and other development to the consumer and encourage investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public; (3) provide assurance to developers that they may proceed with their projects in accordance with existing policies, rules and regulations, subject to their conditions of approval; and (4) strengthen the public planning process.
- C. Owner is the holder of a legal or equitable interest in the Property and intends to develop the Property for a large multi-phase, mixed use development with low-density residential, commercial/retail, business park, light manufacturing, planning/research and development, and open space/park and recreation land uses, all as set forth in the Development Plan. The Development of the Property requires substantial early capital expenditures and

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investments with respect to the construction and installation of infrastructure and facilities, both on-site and off-site, of sufficient capacity to serve the residents and others using the Property as anticipated by the General Plan, the Specific Plan, the Vesting Tentative Map, and this Agreement.

D. City has determined that the Development Plan implements the goals and policies of City's General Plan and the Specific Plan (as referenced in Government Code Sections 65450 *et seq.*) applicable to the Project and provides appropriate land uses and imposes appropriate standards and requirements with respect to land development and usage so as to maintain the overall quality of life and of the environment within City. City has further determined that the Project as carried out pursuant to the Development Plan will provide benefits and mitigate impacts that exceed those attributable to the Project.

E. The construction of the Sports Park Complex is an amenity which City could not otherwise require as a condition of the Development Approvals and will significantly enhance recreational opportunities for the citizens of City. It is also an amenity that will enhance Owner's ability to market and sell residential units to be developed on the Property. City and Owner intend that in exchange for the conveyance to Owner of the City Property, Owner shall dedicate the area to be developed for the Sports Park Complex to City. City and Owner intend that the Sports Park Complex shall be designed and constructed by Owner at Owner's sole expense but City shall have the right to choose a firm to design the Sports Park Complex and shall have final approval of the design.

F. Pursuant to Government Code Section 65865, City has adopted the Development Agreement Ordinance establishing procedures and requirements for the consideration of proposed development agreements.

G. City has adopted the Existing Development Approvals in order to protect the interests of City's existing and anticipated citizens and the quality of their community and environment through the planned development process. In approving the Development Plan authorized by the Existing Development Approvals, City has analyzed the environmental effects of this Project, certified the EIR, made the necessary findings, and adopted the Mitigation Monitoring and Reporting Program as required by the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*). City has found, pursuant to Resolution 99-\_\_\_ that the execution of this Agreement is within the scope of the EIR and no new environmental documentation is required.

H. City's staff has reviewed this Agreement, deemed it to be complete, and prepared a report to the Planning Commission pursuant to City Municipal Code Section 10-9.05 regarding this Agreement's consistency with the General Plan and the Specific Plan. The Planning Commission has made the necessary findings set forth in the City Municipal Code Section 10-9.08 and recommended that the City Council authorize execution of a Development Agreement. The City Council has held a public hearing and found and determined that this Agreement: (i) is consistent with City's General Plan and the Specific Plan; (ii) is in the best interests of the health, safety and general welfare of City, its residents, and the public; (iii) is

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entered into pursuant to, and constitutes a present exercise of City's police power; and (iv) is entered into pursuant to, and complies with, the requirements of Section 65867 of the Development Agreement Legislation and with the Development Agreement Ordinance.

I. City has adopted Ordinance No. 99-\_\_ on September 7, 1999 approving this Agreement and its execution in accordance with the provisions of the Development Agreement Legislation and the Development Agreement Ordinance.

Based on the foregoing, Owner and City desire to enter into this Agreement.

## AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals of fact, the mutual covenants contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

### 1. DEFINITIONS; EXHIBITS

1.1. Definitions. Each capitalized use of any of the following terms in the Recitals of this Agreement and in this Agreement has the meaning set forth below for each such term.

1.1.1. "AFC&WCD Property" means the real property described in Exhibit A which is owned by the Alameda County Flood Control and Water Conservation District and which is located in the City of Union City, and which is to be detached from the City of Union City and annexed to City. A portion of the AFC&WCD Property is to be acquired from the Alameda County Flood Control and Water Conservation District and conveyed to City for inclusion in the Sports Park Complex.

1.1.2. "Building and Improvement Standards" means those Regulations which are of general application within City, which are intended to be applied ministerially to the improvement of real property, and which establish standards for the building, construction and installation of structures, buildings, and associated improvements on real property, such as and including, without limitation, City's building, plumbing, mechanical, grading, swimming pool, sign and fire Regulations.

1.1.3. "CC&Rs" means any covenants, conditions, and restrictions recorded or to be recorded against the Property which provide for a development review process on the Property by an Owner's Association created by such covenants, conditions, and restrictions.

1.1.4. "City" means the City of Hayward, a charter city located in the County of Alameda, State of California.

1.1.5. "City Property" means the real property described in Exhibit B which is to be acquired by Owner from City and added to the Property in exchange for the land on which the Sports Park Complex is to be developed.

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1.1.6. "Conditions of Approval" means those conditions of approval of the Vesting Tentative Map contained in Exhibit C.

1.1.7. "Development" means the improvement of the Property with the structures, improvements and facilities comprising the Project including, without limitation: grading; the construction of infrastructure and the public facilities related to the Project whether located within or outside the Property; the construction of structures and buildings; and the installation of landscaping. "Development" does not include the maintenance, repair, reconstruction or redevelopment of any structures, improvements or facilities after the construction and completion thereof.

1.1.8. "Development Agreement Legislation" means Sections 65864 through 65869.5 of the California Government Code as they exist on the Effective Date.

1.1.9. "Development Agreement Ordinance" means Ordinance 84-015 C.S. (City Municipal Code Sections 10-9.01 through 10-9.15) which was adopted on July 10, 1984, establishing a procedure for the consideration and approval of development agreements pursuant to the Development Agreement Legislation.

1.1.10. "Development Approval(s)" means any and all permits, approvals or other entitlements for use of any kind or character required under the Existing Land Use Regulations and all amendments to the Existing Land Use Regulations necessary to confer the requisite lawful right on Owner to develop the Project on the Property, and all revisions and modifications thereto, including but not limited to: general plan amendments; specific plan amendments; preliminary development plans; tentative and final subdivision tract maps; vesting tentative maps; development permits for residences, commercial and industrial structures, and recreational amenities; development allotments; conditional use permits; variances; development guidelines; and grading, building, and other similar permits.

1.1.11. "Development Guidelines" means the Development Guidelines for the South of Route 92 Specific Plan adopted by Resolution No. 98-028 of City Council of City on February 17, 1998 and attached as Exhibit D.

1.1.12. "Development Plan" means the Development authorized by the Existing Development Approvals under the Existing Land Use Regulations.

1.1.13. "Director" means the Community and Economic Development Director/Planning Director of City.

1.1.14. "Effective Date" means \_\_\_\_\_, 1999, or such later date on which Ordinance No. \_\_\_\_\_ approving and authorizing the execution of this Agreement becomes effective.

1.1.15. "EIR" means the program environmental impact report entitled "South of Route 92 General Plan Amendment and Specific Plan, Oliver Estate/Weber Properties, Program

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Environmental Impact Report,” consisting of 3 volumes and an Addendum, and certified by Resolution No. 98-028 of City Council of City on February 17, 1998.

1.1.16. “Exaction” means any cost, fee, charge, payment, assessment, tax, or other monetary or non-monetary requirement charged or imposed by City as a condition of, or in connection with, the development of, construction on, or use of real property under any Land Use Regulation or any other Regulation, including without limitation: in-lieu fees or payments; assessments, dedication or reservation requirements; obligations for on-site or off-site improvements, facilities, or services; deposit requirements; bond requirements; insurance requirements; subdivision improvement requirements; mitigation measures in connection with environmental review of the Project; excise or other taxes imposed on the privilege of developing real property; or fees for services.

1.1.17. “Existing Development Approvals” means the Development Approvals in effect on the Effective Date. The following Approvals constitute the Existing Development Approvals:

- (a) The EIR;
- (b) The Statement of Overriding Considerations;
- (c) The Mitigation Monitoring and Reporting Program;
- (d) The General Plan Amendment;
- (e) The Specific Plan;
- (f) The Development Guidelines;
- (g) Measure HH;
- (h) The Vesting Tentative Map; and
- (i) The Conditions of Approval.

1.1.18. “Existing Land Use Ordinances” means the Land Use Ordinances in effect on the Effective Date. The Existing Land Use Ordinances include but are not limited to:

- (a) Ordinance No. 98-04 Amending the Zoning Ordinance, Chapter 10, Article 1 of the Hayward Municipal Code, To Establish New Zoning Districts and Regulations for the Open Space/Parks and Recreation District, the Commercial/Retail District, the Business Park District, and the Light Manufacturing, Planning/Research and Development District, which is attached hereto as Exhibit E; and

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(b) Ordinance No. 98-05 Amending Sections 10-1.156 And 10-1.166 Of Chapter 10, Article 1 of the Hayward Municipal Code by Rezoning and Prezoning Certain Territory Located in the South of Route 92 Planning Area, which is attached hereto as Exhibit F.

1.1.19. "Existing Land Use Regulations" means the Land Use Regulations in effect on the Effective Date, including but not limited to the Existing Land Use Ordinances and the Existing Development Approvals.

1.1.20. "General Plan" means the Hayward General Policies Plan, as amended through the Effective Date.

1.1.21. "General Plan Amendment" means the South of Route 92 General Plan Amendment (GPA 97-110-02) adopted by Resolution No. 98-028 of City Council of City on February 17, 1998 and attached as Exhibit G.

1.1.22. "Habitat Mitigation Plan" means the South of Route 92 Habitat Mitigation Plan to be approved by City prior to the approval of the first final map. Upon such approval, the Habitat Mitigation Plan shall be deemed to be one of the Existing Development Approvals.

1.1.23. "Land Use Ordinances" means the ordinances now or hereafter adopted by City which govern permitted uses of land, density and intensity of use, and the design, improvement, and construction standards and specifications applicable to the Development of the Property, including, but not limited to, zoning ordinances and zoning reclassifications; development moratoria; ordinances implementing growth management and phased development programs; ordinances establishing or increasing Exactions; subdivision and park codes and any other similar or related codes; and the Building and Improvement Standards.

1.1.24. "Land Use Regulations" means the Regulations now or hereafter adopted by City governing the permitted uses of land, density and intensity of use, including but not limited to: City's General Plan and the Specific Plan, and the design, improvement and construction standards and specifications applicable to the Development of the Property. The Land Use Regulations include, but are not limited to, the Land Use Ordinances and the Development Approvals. The Land Use Regulations do not include: (1) regulations relating to the conduct of business, professions and occupations generally; (2) regulations for the control and abatement of nuisances; (3) encroachment permits or other permits or conveyances of rights and interests which provide for the use of or entry upon public property; or (4) any exercise of the power of eminent domain.

1.1.25. "Measure HH" means the proposition approved by the voters of City on November 3, 1998 approving an ordinance changing the designation on the General Policies Plan Map of the General Plan for a portion of the Property from Open Space-Baylands to the designation described in Section VII.B.4 of Resolution No. 98-05 adopted by City Council of City on February 17, 1998, the passage of which at the November 3, 1998 election was acknowledged by City by Resolution 98-207 adopted on December 8, 1998, and which is attached as Exhibit H.

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1.1.26. "Mitigation Monitoring and Reporting Program" means the Mitigation Monitoring and Reporting Program approved by Resolution No. 98-028 of City Council of City on February 17, 1998, which is attached hereto as Exhibit I.

1.1.27. "Mortgage" means a mortgage, deed of trust, sale and leaseback arrangement, assignment of leases and rents, lease financing, or other transaction in which the Property or a portion thereof, or any interest therein, is pledged as security, contracted for in good faith and for fair value.

1.1.28. "Mortgagee" means the holder of a beneficial interest in the Property under a Mortgage.

1.1.29. "Owner" means the Gordon Oliver Estate and Trust and the Alden Oliver Trust.

1.1.30. "Owners Association" means a property owners association created under any CC&Rs burdening the Property.

1.1.31. "Owner's Obligations" means the obligations of Owner to pay the sums, build and construct the improvements, dedicate the lands and improvements, and undertake and perform the other actions described in Section 3.

1.1.32. "Project" means all phases of the development project contemplated by the Development Plan with respect to the Property, including but not limited to on-site and off-site improvements, as such development project is further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.33. "Property" means the real property in which Owner has a legal or equitable interest on the Effective Date and on which Owner intends to develop the Project. The Property is more particularly described in Exhibit J. The Property includes the City Property upon its acquisition by Owner and any portion of the AFC&WCD Property that is conveyed to City and annexed to City.

1.1.34. "Public Facilities" means the lands and facilities to be improved, constructed and dedicated or conveyed to the public pursuant to Section 3.2, as described in the Conditions of Approval. The Public Facilities do not include the Sports Park Complex.

1.1.35. "Regulations" means City laws, statutes, ordinances, and codes (including the Building and Improvement Standards); resolutions, rules, regulations, orders, approvals, denials and conditional approvals in connection with tentative, vesting tentative and final subdivision maps, parcel maps, conditional use permits, variances and other permits of every kind and character; the programs and official policies and actions; and all amendments to the foregoing.

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1.1.36. "School Fee Mitigation Agreement" means the agreement between Owner and the Hayward Unified School District regarding the payment of school fees and which is attached as Exhibit K.

1.1.37. "Specific Plan" means the South of Route 92 Specific Plan (SP-98-210-01) adopted by Resolution No. 98-028 of City Council of City on February 17, 1998.

1.1.38. "Sports Park Complex" is the approximately 25-acre recreational complex conceptually described in the Specific Plan and approved by the voters, and more particularly referred to in the Vesting Tentative Map and the Conditions of Approval.

1.1.39. "Statement of Overriding Considerations" means the Statement of Overriding Considerations adopted by Resolution No. 98-028 of City Council of City on February 17, 1998.

1.1.40. "Vesting Tentative Map" means the vesting tentative subdivision map (TM-\_\_\_\_\_) approved by Resolution No. 99-\_\_ of City Council of City on \_\_\_\_\_ and filed for record in the Official Records of Alameda County on \_\_\_\_\_, 1999 [add record information].

1.2. Exhibits. The reference to a specific "Exhibit" in this Agreement is a reference to one of the exhibits listed below, as determined by the accompanying letter designation, which exhibits are attached hereto and by this reference made a part hereof.

| <u>Exhibit Designation</u> | <u>Description</u>                          |
|----------------------------|---------------------------------------------|
| A                          | AFC&WCD Property                            |
| B                          | City Property                               |
| C                          | Conditions of Approval                      |
| D                          | Development Guidelines                      |
| E                          | Ordinance No. 98-04                         |
| F                          | Ordinance No. 98-05                         |
| G                          | General Plan Amendment                      |
| H                          | Measure HH                                  |
| I                          | Mitigation Monitoring and Reporting Program |
| J                          | The Property                                |

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Exhibit Designation

Description

K

School Fee Mitigation  
Agreement

2. MUTUAL BENEFITS AND ASSURANCES

2.1 Purposes of Agreement. This Agreement is entered into to carry out the Development Plan for the Project in a manner that will ensure certain anticipated benefits to both City (including, without limitation, the existing and future residents of City) and Owner as described in the RECITALS, and to provide to Owner assurances regarding the Regulations that will be applicable to the Development of the Property, including but not limited to those relating to timing, density and intensity of development, that will justify the undertakings and commitments of Owner described above and the early investment in major on-site and off-site infrastructure needed for the Project.

2.2 Undertakings and Assurances Contemplated and Promoted by Development Agreement Legislation. The mutual undertakings and assurances described above and provided for in this Agreement are for the benefit of City and Owner and promote comprehensive planning, private and public cooperation and participation in the provision of public facilities; the effective and efficient development of infrastructure and facilities supporting development; and the mitigation of the impacts of development on the community which was contemplated and promoted by the Development Agreement Legislation.

2.3 Bargained For; Reliance by Parties. The assurances provided to Owner in Section 4 are provided pursuant to and as contemplated by the Development Agreement Legislation and are bargained for and consideration for the undertakings of Owner set forth in Section 3 of this Agreement.

3. OWNER'S OBLIGATIONS; PROVISION OF PUBLIC BENEFITS

3.1 In General; Public Benefits.

3.1.1. Public Benefits. A primary purpose of this Agreement is to provide for the coordinated completion of the Public Facilities described in the Conditions of Approval which will better serve the Development of the Property, as well as contributions and dedications which aid in offsetting the impacts of the Project on the community at large, and provide substantial public benefits, some of which are described in Recital D. Accordingly, Owner shall promptly and fully perform Owner's Obligations as set forth in and subject to the terms and conditions of the Conditions of Approval, including, but not limited to, the construction and dedication or conveyance of the Public Facilities.

3.1.2. Existing Conditions and Undertakings. Owner shall perform all of the duties and obligations provided for or required by any provisions of the General Plan, the

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Specific Plan, the Development Plan, the Existing Development Approvals, and the Conditions of Approval in connection with the Development of the Property. Owner has no obligation under this Agreement to proceed with development of the Project, if it decides, in its sole discretion, that it is unable or unwilling to construct the Project.

3.2. Dedication, Construction and Conveyance of Public Facilities. Owner shall complete the Public Facilities in accordance with the provisions of Conditions of Approval and with designs, specifications and standards promulgated by City in accordance with the Existing Land Use Regulations. Owner shall dedicate or convey the Public Facilities to City in fee, free of all liens and encumbrances of every kind and nature except as expressly set forth in the Conditions of Approval or as agreed to in writing by City. In order to effectuate the purposes of this Agreement, Owner and City may enter into one or more agreements (hereinafter "Implementation Agreements") prior to the filing and recording of each final map necessary for the Property. Such Implementation Agreements may take the form of subdivision improvement agreements. The Implementation Agreements shall provide the specific terms and set forth standards and deadlines for the construction and completion of the Public Facilities and their conveyance to City as provided for in this Agreement, and the construction of privately owned infrastructure and common facilities necessary for the phase described in the Vesting Tentative Map. All Implementation Agreements must be consistent with the Conditions of Approval, and the bonding or equivalent security requirements imposed on Owner in the Implementation Agreements must be in an amount consistent with the Conditions of Approval.

3.3. Relationship of Parties. In performing Owner's Obligations, Owner is an independent contractor and is not the agent or employee of City; nor shall anything in this Agreement be construed as creating between Owner and City a partnership or joint venture for any purpose.

3.4. Public Works. If Owner is required by this Agreement to finance and either design or construct any public works facilities which will be dedicated or conveyed to City or any other public agency upon completion, and if required by applicable laws to do so, Owner shall perform such work in accordance with City specifications as set forth in the Existing Land Use Regulations. This Section 3.4 does not apply to the financing, design, or construction of the Sports Park Complex.

3.5. Obligations Regarding Public Facilities. In any instance where Owner is required to construct any Public Facilities on lands within City not owned by Owner, Owner shall use its best efforts to acquire any rights-of-way, easements, or other property rights or interests within City which City reasonably determines to be necessary for such Public Facilities. If Owner is unable to acquire any such property right or interest and City must acquire or utilize eminent domain to acquire any real property rights or interests necessary for the construction of such Public Facilities, Owner shall pay the costs of acquiring such rights or interests, including but not limited to relocation costs, costs of suit, and attorney's fees, except as otherwise provided in the Conditions of Approval. In any instance where Owner is required to pay a portion of the costs of construction of Public Facilities on lands outside of City, Owner shall contribute its share of the reasonable costs of construction and acquisition either prior to the commencement of

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construction or acquisition of any rights-of-way, easements, or interests reasonably required to construct such Public Facilities, or as specified in the Conditions of Approval.

3.6. Mello-Roos Community Facilities District; Other Assessment District or Financing Mechanisms. Consistent with the requirements specified in the Conditions of Approval, pursuant to Chapter 2.5 (commencing with Section 53312) Part I, Division 2, Title 5 of the Government Code of the State of California, commonly known as the "Mello-Roos Community Facilities Act of 1982," Owner may, prior to the approval of the final map for the first phase, petition City to establish a Community Facilities District ("CFD") including the Property for the purpose of acquiring, constructing maintaining, and financing through the sale of bonds the acquisition and construction of all or a portion of the Public Facilities. Alternatively, or in addition thereto, Owner may request that City initiate and complete proceedings under any available public financing mechanism to provide public conduit financing for the construction or maintenance or both of all or a portion of the Public Facilities, including the power to acquire from Owner public improvements constructed by Owner ("Alternative Financing Mechanisms"). If so requested by Owner, City shall cooperate with Owner and use its best efforts to establish the CFD or Alternative Financing Mechanisms and to take all steps necessary to cause the CFD or Alternative Financing Mechanisms to issue bonds for such purposes, provided, however, that City may, in the exercise of its reasonable discretion, elect not to establish the CFD or Alternative Financing Mechanisms or to issue bonds for such purposes. Notwithstanding any other provision of this Section 3.6 or of this Agreement to the contrary, City shall not, without the written consent of Owner, cause to be imposed on the Property, any portion thereof or any lot or dwelling unit created therein, an effective property tax rate (as hereinafter defined) in excess of two percent (2%) of the full cash value of such property. As used herein, the term "effective property tax rate" means the basic tax rate allowed by California Constitution art. XIII A, Section 1(b), which Section for purposes of this Agreement is deemed to include any Mello-Roos financing or other Alternative Financing Mechanism requested by or consented to by Owner.

3.7 Maintenance of Improvements by Owners Association. Notwithstanding anything in Section 3.6 to the contrary, Owner may, with City's prior written approval and prior to the approval of the final map for the first phase, designate an Owners Association to maintain any Public Facility on the Property, or in reasonable proximity thereto, or where appropriate, the Alameda County Flood Control and Water Conservation District, and which Public Facility could otherwise be maintained through the CFD or Alternative Financing Mechanisms. City may impose reasonable requirements on any such Owners Association to ensure that the maintenance of those Public Facilities is performed in a manner acceptable to City.

3.8. Sports Park Complex. Owner's and City's specific rights and obligations with respect to the Sports Park Complex are set forth more fully in the Conditions of Approval which obligations are made part of Owner's Obligations. Owner shall, at Owner's sole cost and expense, construct the Sports Park Complex as part of the Project as provided in the Conditions of Approval, and except as otherwise provided in this Section 3.8, such construction shall be subject only to those Regulations applicable to private improvements within City. City may subject such construction to Building and Improvement Standards applicable to the construction

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of public improvements if such Building and Improvement Standards establish standards for construction of the improvements within the Sports Park Complex that are intended to enhance the safety of future users of the Sports Park Complex. Upon substantial completion of the Sports Park Complex and concurrently with conveyance of the City Property, Owner shall convey the Sports Park Complex to City free and clear of any liens or encumbrances other than the encumbrance of this Agreement.

4. REGULATIONS GOVERNING THE DEVELOPMENT OF THE PROPERTY AND OTHER CITY OBLIGATIONS

4.1. Permitted Uses. The uses permitted hereunder in accordance with the Existing Land Use Regulations, include but are not limited to the following: low-density residential, commercial/retail, business park, light manufacturing, planning/research and development, and open space/park and recreation uses, all as more specifically described in and subject to the limitations of the Development Plan.

4.2. Number of Dwelling Units, Density and Intensity. The total number of residential units, and the density and intensity of residential units and commercial uses permitted hereunder in accordance with the Existing Land Use Regulations are as set forth in the Development Plan and consist of 538 residential units (307 in the RS Zone, 141 in the RSB6 Zone, and 90 in the RSB8 Zone) and 22 business park lots as allowed by the Specific Plan. City shall not reduce the permitted number of residential units or the permitted number of business park lots without the prior written consent of Owner.

4.3. Maximum Height and Size of Buildings. The maximum height and size of the Project buildings on the Property permitted hereunder in accordance with the Existing Land Use Regulations are as set forth in the Development Plan.

4.4. Reservations and Dedications of Lands for Public Purposes and Undertaking to Participate in Completion of Major Public Facilities. As provided in Section 3 and more specifically described in the Conditions of Approval, Owner shall dedicate certain lands and construct and convey to the public the Public Facilities, and shall provide certain public benefits. In addition, Owner shall provide certain other public benefits and facilities as required by the Existing Land Use Regulations and the Existing Development Approvals.

4.5. Moratoria, Phasing of Development. Except as expressly provided in this Section 4, no subsequent City-imposed moratorium, ordinance, resolution, or other Land Use Regulation or limitation on the conditioning, rate, timing or sequencing of the Development of the Property or any portion thereof shall apply to or govern the Development of the Property during the term hereof whether affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy permits or other entitlements to use issued or granted by City. In the event of any such subsequent action by City, City shall continue to grant to Owner all necessary Development Approvals in accordance with the Existing Land Use Regulations and

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otherwise permit the Development of the Property in accordance with the terms of this Agreement.

4.6. Term of Subdivision Maps and Other Existing Development Approvals. Notwithstanding any provision of the Existing Land Use Regulations to the contrary, the Existing Development Approvals, including without limitation, the Vesting Tentative Map, are extended for the longer of (a) the term of this Agreement, as it may be extended pursuant to Section 7; or (b) the term of the particular Existing Development Approval otherwise allowed under the Subdivision Map Act ("Map Act") (Government Code Section 66410 *et seq.*) or the Existing Land Use Regulations.

4.7. Vested Rights Under Vesting Tentative Map. Notwithstanding any provision of the Existing Land Use Regulations to the contrary, the vested rights conferred by the Vesting Tentative Map are extended to the later of (a) a date three years after City approval of the last final map for the Project; or (b) the latest date otherwise allowed under the Map Act; and those vested rights and the provisions of this Section 4.7 survive termination of this Agreement.

4.8. Regulation of Development.

4.8.1. In General. Except as provided in Section 4.9.2, during the term of this Agreement, the Land Use Regulations applicable to and governing the Development of the Property are the Existing Land Use Regulations, and Owner has the vested contractual right to develop the Project on the Property in accordance with the Existing Land Use Regulations. During the term of this Agreement, City may control Development of the Property in accordance with this Agreement. If there is any inconsistency between this Agreement and the Existing Land Use Regulations, the provisions of this Agreement prevail.

4.8.2. Development Review Process. If an application is filed under the Land Use Regulations for a discretionary approval by City of an activity on the Property, City shall promptly provide written notification to the Owners Association created by the CC&Rs burdening the parcel or parcels that are the subject of the application of the filing of the application, and to the extent permitted by State law, City shall not process the application until it has received written notification from that Owners Association that the activity for which the approval is sought has been approved by that Owners Association, or City determines, in its sole discretion, that no such approval is required. City's failure to provide such notification does not constitute default under this Agreement, nor does such failure invalidate or otherwise impair any discretionary approval by City of any activity on the Property.

4.9. Limitations, Reservations and Exceptions.

4.9.1. New Land Use Regulations. City may apply new Land Use Regulations to the Development of the Property which are not in conflict with the Existing Land Use Regulations or this Agreement. New Land Use Regulations in conflict with this Agreement include but are not limited to Land Use Regulations that alter the requirements for any Exaction

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except as expressly permitted under this Agreement or alter any of the Existing Development Approvals, including without limitation, any of the following:

- (a) Land uses;
- (b) Density or intensity of land uses; or
- (c) The permitted height, size, or location of buildings.

4.9.2. State and Federal Laws and Regulations. City may apply any Land Use Regulation to the Development of the Property which City in the exercise of its reasonable discretion (taking into consideration, among other things, the assurances provided to Owner hereunder) determines is required in order for City to comply with mandatory State and federal laws and regulations that apply to the Development of the Property; provided, that if such State or federal laws and regulations preclude compliance with one or more provisions of this Agreement, such provisions are modified or suspended as may be necessary to comply with such State and federal laws and regulations. In that case and except as otherwise provided in this Section 4.9.2, this Agreement remains in full force and effect to the extent that it is consistent with such laws and regulations and that performance of the remaining provisions is consistent with the intent and purposes of this Agreement. If Owner determines in good faith using reasonable business judgment that modification or suspension of such provisions is infeasible, Owner may by written notice to City notify City that Owner intends either:

- (a) Terminate this Agreement; or
- (b) Extend the term of this Agreement pursuant to Section 14.15 for the duration of the period in which the change in State or federal laws precludes compliance with this Agreement.

4.9.3. Notwithstanding Section 4.9.2, if the City Council of City after public hearing and following receipt of Owner's notice concludes by a two-thirds vote based on substantial evidence that it is feasible to modify or suspend the provisions with which State or federal regulations preclude compliance, then the City Council of City may reject Owner's notification, in which case this Agreement is not terminated and such provisions shall be modified or suspended, as the City Council of City shall determine.

4.9.4. Public Health and Safety. City may apply any Land Use Regulation to the Development of the Project on the Property which City determines is reasonably required to prevent or respond to a condition creating substantial danger to the health or safety of persons on the Property or adjoining properties.

4.9.5. Building and Improvement Standards. City may apply to the Development of the Project on the Property present and future Building and Improvement Standards, except for any future Building and Improvement Standard that limits the land uses, reduces the density or intensity of land uses, or the permitted height, size, or location of buildings vested by this Agreement.

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4.9.6. Processing Fees and Charges. City may impose legally allowed processing fees and charges of every kind and nature imposed or required by City under current or future Regulations covering the actual costs of City in (i) processing applications and requests for permits, approvals and other actions and (ii) monitoring compliance with any permits issued or approvals granted or the performance required by Owner hereunder.

4.9.7. Taxes, Fees and Assessments. City may impose taxes, assessments and fees, as allowed by law, necessary to implement the Project, including but not limited to those specifically mentioned in or contemplated by the Conditions of Approval. City may also impose such new reasonable taxes, assessments and fees on the Project as may be also imposed on all or a portion of other land and projects within the jurisdiction of the City provided that the impact thereof does not fall disproportionately on the Project or unfairly burden the Project vis-à-vis the rest of the land and projects within City's jurisdiction or portion thereof subject to the fee, tax or assessment. The amount of any fees, taxes and assessments applicable to the Project may be reasonably increased over time so long as the increase is applied consistently to all comparable land or projects subject thereto.

4.10. Regulation by Other Public Agencies. The parties acknowledge that other public agencies not within the control of City possess authority to regulate aspects of the Development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies.

4.11. City Cooperation; City Property; AFC&WCD Property. City shall cooperate with Owner and take such additional actions as may be reasonably requested by Owner to implement this Agreement. City shall perform all of its obligations under this Agreement in a timely manner, and City's failure to carry out any of its obligations in a timely manner relieves Owner from compliance with any reasonably related requirement or obligation. Without limiting the generality of the foregoing, City shall convey the City Property to Owner free and clear of any liens or encumbrances as provided in the Conditions of Approval; and (b) promptly after the Effective Date annex the AFC&WCD Property.

4.12. Drainage, Flood Control, and Sewer Capacity. Owner shall design and construct, design and fund, or contribute to the cost of constructing any drainage, flood control, and sewer improvements that constitute obligations of Owner under the Conditions of Approval. For those off-site drainage, flood control, and sewer improvements that Owner is obligated to design and fund and City is obligated to construct, if any, City shall use its best efforts to complete such improvements in an expeditious and timely manner to enable timely issuance of Project building permits and certificates of occupancy. If Owner cannot comply with the Development Approvals or with this Agreement, or cannot develop the Project in accordance with the phasing plan approved by City because City fails to construct or complete any such Public Facility, Owner is not in default under this Agreement. City acknowledges that, with the drainage, flood control, and sewer improvements to be implemented by Owner, there is adequate drainage, flood control, and sewer capacity to serve the Project.

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4.13. Resolution For Private Streets. City shall adopt, if appropriate, a resolution or ordinance subjecting the Project's private streets to the provisions of the California Vehicle Code and to any Department of Motor Vehicles regulations or other regulations promulgated thereto.

4.14. Acceptance of Dedications. In accordance with the requirements of the Conditions of Approval and this Agreement, City shall accept in a timely manner all dedications and conveyances of Public Facilities from Owner.

## 5. PERIODIC REVIEWS

5.1. Annual Review. City and Owner shall annually review performance under this Agreement. Owner shall pay City's reasonable costs of monitoring this Agreement. To institute each such annual review, within 30 days after each anniversary of the Effective Date, Owner shall deliver to City:

- (a) A then current build-out phasing plan for the Project; and
- (b) All information reasonably requested by City regarding Owner's performance under this Agreement demonstrating that Owner has complied in good faith with terms of this Agreement.

5.2. Termination After Annual Review. If as a result of such annual review, the Director finds and determines, on the basis of substantial evidence, that Owner has not complied in good faith with any of the terms or conditions of this Agreement, City may terminate or modify this Agreement in whole or in part in accordance with Section 10-9.11 of the Development Agreement Ordinance, subject to the following limitations:

- (a) Termination of this Agreement is governed by Section 10 of this Agreement and is subject to Section 11 of this Agreement; and
- (b) Any modifications of this Agreement by the City Council of City pursuant to Section 10-9.11 of the Development Agreement Ordinance, and notwithstanding Section 10-9.13 of the Development Agreement Ordinance, that are not consented to in writing by Owner are limited to modifications or conditions that are both (i) reasonably necessary to ensure the future good faith compliance by Owner with this Agreement; and (ii) necessary to protect the interests of City.

5.3. Certificate of Compliance. If after an Annual Review, City finds Owner has complied in good faith with this Agreement, City shall issue to Owner a Certificate of Compliance certifying that Owner has so complied through the period of the applicable Annual Review. The Certificate of Compliance shall be prepared by Owner, must be in recordable form, and must contain such information as may be necessary to impart constructive notice of City's finding. Upon issuance of the Certificate of Compliance, City is estopped from pursuing any remedy under this Agreement for any default which knew or should have known existed prior to or on the date of the Certificate of Compliance. Owner may record the Certificate of Compliance in the Official Records of the County of Alameda.

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## 6. TRANSFERS AND ASSIGNMENTS

### 6.1. Sale, Transfer and Assignments of Rights and Interests.

6.1.1. General. Except as otherwise provided in this Section 6, neither party shall sell, assign or transfer any of its interests, rights or obligations under this Agreement to any person or entity other than a Mortgagee without the written consent of the other, which consent shall not be unreasonably withheld. City shall promptly consent to the sale, assignment, or transfer if City determines that all of the following requirements are met: (a) Owner is not in default under this Agreement; (b) the purchaser, assignee, or transferee is willing to and can comply with this Agreement and agrees to comply with this Agreement; and (c) the purchaser, assignee, or transferee executes any document reasonably requested by City with respect to the assumption of the Owner's Obligations. If Owner sells, assigns, or transfers all or any portion of its interest in the Property to any person or entity other than a Mortgagee, Owner shall ensure that any such sale, assignment or transfer includes an assignment and an assumption of Owner's Obligations. Owner shall also provide City with sufficient documentation of such assignment and assumption of Owner's Obligations. The term "assignment" as used in this Agreement includes successors-in-interest to City or Owner that may be created by operation of law. Any attempt to sell, assign or transfer any right or interest in this Agreement except in strict compliance with this Section 6 is null and void and of no force and effect. Notwithstanding the foregoing, City may sell, assign or transfer to another public agency City's interest in any property dedicated or transferred to City pursuant to the terms of this Agreement.

6.1.2. Exceptions. Owner may sell, assign, or transfer to Duc Housing Partners, Inc., a Delaware corporation ("Duc Housing"), all or a portion of Owner's interests, rights, and obligations under this Agreement without the prior written consent of City, provided that such sale, assignment, or transfer is in connection with a sale, assignment, or transfer of all or a portion of the Property, and Duc executes any document reasonably requested by City with respect to the assumption of Owner's Obligations.

6.1.3. Subject to Terms of Agreement. Following any such sale, assignment or transfer of any of the rights and interests of Owner under this Agreement, the exercise, use and enjoyment of any portion of the Property sold, assigned, or transferred shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were Owner.

6.1.4. Release of Owner. Notwithstanding the sale, assignment, or transfer of portions or all of the Property or rights or interests under this Agreement, Owner remains obligated under this Agreement unless released in whole or in part by City with respect to Owner's Obligations and the other duties and obligations of Owner under this Agreement, pursuant to this Section 6.1.4. City shall release Owner if :

- (a) Owner is not in default under this Agreement;

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(b) City consents to the sale, assignment, or transfer as provided in Section 6.1.1 or the assignment is to Duc Housing; and

(c) The purchaser, assignee or transferee assumes in writing the duties and obligations from which Owner wishes to be released.

## 7. TERM OF AGREEMENT

7.1. Stated Term. This Agreement is effective as of the Effective Date and continues for a term of 10 years unless earlier terminated pursuant to the provisions of this Agreement. Notwithstanding the foregoing, the term of this Agreement may be extended an additional 5 years by the further written agreement of the parties in accordance with Section 8.

7.2. Rights and Duties Following Termination or Expiration. Upon the termination or expiration of this Agreement, no party has any further right or obligation hereunder except with respect to:

(a) Any obligation to be performed prior to termination or expiration, including without limitation, performance of any obligation with respect to which a party may be in default at the time of termination or expiration; or

(b) Any obligation which survives termination or expiration pursuant to the Existing Development Approvals.

7.3. Effect of Termination. If this Agreement is terminated because of a default, the termination does not affect any right or duty arising out of any Development Approval obtained concurrently with, or subsequently to, the Effective Date. Nothing in Section 7.2 precludes City from revoking, rescinding, or otherwise terminating any Development Approval either contemporaneously with termination of this Agreement or subsequently thereto.

## 8. AMENDMENT

8.1. Amendment or Cancellation. Except as otherwise specifically provided in this Agreement, this Agreement may be amended or cancelled only by the mutual agreement of the parties in a writing executed by the parties and recorded in the official records of the County of Alameda, in accordance with Government Code Section 65868 and Section 10-9.12 of the Development Agreement Ordinance.

8.2. Amendment of Development Plan. The Development Plan may be amended or modified by City in the following manner:

8.2.1. Procedural Requirements. Except as otherwise provided in Section 8.2.2, all amendments or modifications of the Development Plan must comply with the procedural provisions of the Land Use Regulations in effect on the date of application for such amendment or modification.

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8.2.2. Amendment By Director. At his or her discretion, the Director may administratively make minor modifications to the Development Plan.

9. PROCESSING OF REQUESTS AND APPLICATION; OTHER GOVERNMENT PERMITS

9.1. Processing. Upon satisfactory completion by Owner of all required preliminary actions, meetings, submittal of required information and payment of appropriate processing fees, if any, Owner and City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the Development Plan in accordance with the Development Approvals, including but not limited to the following: (a) processing and checking of all applications, maps, site plans, development plans, land use plans, grading plans, building plans and specifications, and environmental assessments and reports; and (b) holding all required public hearings for annexations, permits, entitlements or approvals relating to the development of the Project, including, but not limited to, all site plan approvals, final development plans, parcel maps, subdivision maps, subdivision improvement agreements, grading permits, building permits, lot line adjustments, encroachment permits, and related matters as necessary for the completion of the development of all lots and parcels comprising the Property. In this regard, Owner, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder and shall cause Owner's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefor. It is the express intent of this Agreement that the parties cooperate and diligently work to implement any annexations, zoning or other land use, site plan, subdivision, grading, building or other approvals for development of the Project in accordance with the Development Approvals, and both Owner and City each shall use their best efforts to effectuate the purposes of this Agreement.

9.2. Other Governmental Permits. Owner shall apply in a timely manner for such other permits and approvals as may be required from other governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. City shall cooperate with Owner in its endeavors to obtain such permits and approvals.

10. DEFAULT AND REMEDIES

10.1. Termination of Agreement for Default of Owner. After public hearing and in conformity with Section 10-9.13 of the Development Agreement Ordinance, City in its reasonable discretion may terminate this Agreement for any failure of Owner to perform any material duty or obligation of Owner under, or to comply in good faith with, the material terms of this Agreement (hereinafter referred to as an "Owner's Default"); provided, however, City may terminate this Agreement pursuant to this Section 10:1 only after providing written notice to Owner of default setting forth the nature of the Owner's Default and the actions, if any, required by Owner to cure such default and, if that default can be cured, Owner fails to take such actions and cure such default within 90 days after the providing of such notice or, in the event that such default cannot be cured within such 90-day period but can be cured within a longer time, fails to

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commence the actions necessary to cure such default within such 90-day period and to diligently proceed to complete such actions and cure such default.

10.2. Termination of Agreement for Default of City. Owner in its reasonable discretion may terminate this Agreement for any failure of City to perform any material duty or obligation of City under, or to comply with, the material terms of this Agreement (hereinafter referred to as a "City Default"); provided, however, Owner may terminate this Agreement pursuant to this Section 10.2 only after providing written notice to City of default setting forth the nature of City's Default and the actions, if any, required by City to cure such default and, if that default can be cured, City fails to take such actions and cure such default within 90 days after the providing of such notice or, in the event that such default cannot be cured within such 90-day period but can be cured within a longer time, fails to commence the actions necessary to cure such default within such 90-day period and to diligently proceed to complete such actions and cure such default.

10.3. Remedies. In any dispute arising under this Agreement, the parties may mutually agree to mediation of their dispute. Alternatively, either party may, in addition to any other rights or remedies it may have at law or in equity, institute an action to enforce any covenant or agreement herein, enjoin any threatened or attempted violation, or enforce by specific performance the obligations and rights of the parties hereto.

10.4. No Cross Default. Except as provided in Section 6, each owner of a parcel or parcels encumbered by this Agreement is responsible for the duties, obligations and liabilities imposed by this Agreement on such parcel or parcels; and the default by that owner with respect to the performance of that owner's duties, obligations and liabilities hereunder respecting the parcel or parcels owned by that owner does not constitute a default by any other owner of another parcel or parcels encumbered by this Agreement with respect to the performance of any other owner's duties, obligations and liabilities hereunder.

## 11. MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE

11.1. No Impairment of Mortgage. This Agreement is superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement defeats, renders invalid, diminishes or impairs the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement are binding upon and effective against any person (including any Mortgagee) who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

11.2. Rights of Mortgagee. Notwithstanding the provisions of Section 11.1, no Mortgagee has any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee that construction or completion, but no Mortgagee may devote the Property to any uses or construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement and any Development Approvals obtained by Owner.

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11.3. Notice to Mortgagee; Right to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Owner under this Agreement and specifying the address for service thereof, City shall deliver to that Mortgagee, concurrently with service on Owner, any notice given to Owner with respect to any claim by City that Owner has committed a default, and if City makes a determination of noncompliance under Section 10.1, City shall also serve notice of that noncompliance on that Mortgagee concurrently with service on Owner. Notwithstanding anything to the contrary in Sections 5 and 10, each Mortgagee has a period of 90 days after the receipt of that notice from City to cure or remedy, or to commence to cure or remedy, the default claimed or the areas of noncompliance set forth in City's notice. If the default or the noncompliance is of a nature that can only be remedied or cured by the Mortgagee upon obtaining possession, the Mortgagee shall diligently seek to obtain possession through a receiver or otherwise, and shall thereafter remedy or cure the default or noncompliance within 90 days after obtaining possession. If any default or noncompliance cannot, with diligence, be remedied or cured within those 90-day periods, then the Mortgagee has additional time as may be reasonably necessary to remedy or cure the default or noncompliance if the Mortgagee commences to cure during those 90-day periods, and thereafter diligently pursues completion of that cure. Nothing in this Agreement permits or authorizes any Mortgagee to undertake or continue construction or completion of any improvements comprising the Project beyond the extent necessary to conserve or protect improvements or construction already made, without first having expressly assumed Owner's Obligations in the manner specified in Section 6.

11.4. City Right to Cure. If Owner defaults under any Mortgage, City may cure that default prior to completion of any foreclosure or any proceeding to terminate the interest of Owner in the Property. Concurrently with serving any notice of default on Owner under a Mortgage, each Mortgagee shall provide to City the same notice of default given Owner. If City invokes its right to cure, Owner shall reimburse City for all costs and expenses incurred by City in curing that default. At its option and in its sole discretion, City may also place a lien upon the Property, or portion thereof, encumbered by the Mortgage with respect to which Owner has defaulted, to the extent of those costs and expenses. That lien is subject and subordinate to the interest of any Mortgagee under its Mortgage, regardless of the date the Mortgage is created or recorded.

## 12. EFFECT OF AGREEMENT

12.1. Successors; Covenants Run With The Land. Subject to the provisions of Section 6;

12.1.1. Binding On Successors. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns;

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12.1.2. Equitable Servitudes. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law; and

12.1.3. Benefit and Burden. Each covenant to do or refrain from doing some act on the Property hereunder (a) is for the benefit of and is a burden upon every portion of the Property, (b) runs with such lands, and (c) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and shall benefit each party and its lands hereunder, and each other person succeeding to an interest in such lands.

12.2. No Dedication or Lien. Nothing herein shall be construed as constituting a dedication or transfer of any right or interest in, or as creating a lien with respect to, the title to the Property. Any dedication or transfer of any right or interest in the Property shall be made only in accordance with this Agreement.

### 13. HOLD HARMLESS

13.1. Hold Harmless; Owner's Activities. Owner shall defend, indemnify, save, and hold City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, costs and liability, and shall provide a defense for City, upon City's tender, in any action for damages, personal injury, or death, which may arise, directly or indirectly, from Owner's or Owner's contractors, subcontractors, agents, or employees' operations under this Agreement, whether such operations be by Owner or by any of Owner's contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as agent for Owner or any of Owner's contractors or subcontractors.

13.2. Hold Harmless; Challenge of Agreement. Owner shall defend, indemnify, save, and hold City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all costs, including costs of suit and attorneys' fees, and shall provide a defense for City, upon City's tender, in any action challenging the validity of this Agreement or relating to any of the Existing Development Approvals, including but not limited to compliance with any requirement of law, approval or action which is a condition precedent to Development of any portion of the Property. City shall have no liability for failure to perform under this Agreement if such failure to perform is the result of a judicial determination that on the Effective Date, the Existing Land Use Regulations were invalid or otherwise not in compliance with law.

### 14. MISCELLANEOUS PROVISIONS

14.1. Effect of Agreement. With respect to the City Property, the provisions of this Agreement bind the use of that property when title to same is transferred to Owner.

14.2. City Acceptance of Mitigation. City acknowledges and agrees that compliance with the provisions of the Conditions of Approval with respect to the mitigation of school

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impacts (evidenced by the School Fee Mitigation Agreement), and local park requirements (through the provision of the community park, the planned dedication of land to City for the Sports Park Complex and the improvement thereof, and other public recreational amenities such as the Bay Trail extension) constitutes full and complete satisfaction of required mitigation of impacts on schools (insofar as City has authority to do so), parkland and open space and meets all City requirements regarding same.

14.3. Recordation of Agreement. The City Clerk of City shall cause this Agreement to be recorded in the Official Records of the County of Alameda within 10 days after the execution of this Agreement by Owner and by City's City Manager pursuant to the ordinance approving this Agreement. Any amendment or cancellation of this Agreement shall be immediately recorded in the Official Records of the County of Alameda.

14.4. Estoppel Certificate.

14.4.1. Contents. Owner may at any time deliver written notice to City requesting City to certify in writing that:

(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, or if so amended, identifying the amendments; and

(c) Owner is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature and amount of those defaults.

14.4.2. Execution. City shall execute and return the certificate within 30 days following receipt of that notice. The Director is authorized to execute any estoppel certificate requested by Owner. An estoppel certificate obtained under this Section 14.4 may be relied upon by transferees and Mortgagees.

14.5. Certificate of Satisfaction. After completion of the Project, City, upon request of Owner, shall execute in recordable form and deliver to Owner a Certificate of Satisfaction, certifying that Owner has satisfied all of Owner's obligations under this Agreement to the date of the certification. Upon issuance of a Certificate of Satisfaction City is estopped from pursuing any remedy under this Agreement for any default which City knew or should have known existed prior to or on the date of the Certificate of Satisfaction. Owner may record the Certificate of Satisfaction in the Official Records of the County of Alameda.

14.6. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein and no testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

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14.7. Severability. If any term, provision, covenant or condition of this Agreement, including but not limited to the Exhibits to this Agreement, shall be determined invalid, void or unenforceable by a final determination by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Any final determination that any condition in any Exhibit is invalid, void or unenforceable shall not affect any other condition or portion of any Existing Development Approval which is not also specifically determined invalid, void or unenforceable except to the extent such remaining conditions are rendered impracticable to perform.

14.8. Integration and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California.

14.9. Headings. All headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

14.10. Singular and Plural. As used herein, the singular of any word includes the plural.

14.11. Joint and Several Obligations. If any obligation of Owner to City is the obligation of more than one person, such obligation and any liability with respect thereto shall be joint and several among the obligees.

14.12. Time of Essence. Time is of the essence in:

(a) The performance of the provisions of this Agreement as to which time is an element; and

(c) The resolution of any dispute which may arise concerning the obligations of Owner and City as set forth in this Agreement.

14.13. Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

14.14. No Third Party Beneficiaries. The only parties to this Agreement are Owner and City. There are no third party beneficiaries, and this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.

14.15. Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond such party's control, government regulations other than City's, court actions (such as restraining orders or injunctions) or other causes beyond such party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party

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of any of its obligations hereunder shall be extended by the period of time that such events prevented such performance provided that the term of this Agreement shall not be extended under any circumstances for more than 5 years or for a period which would cause this Agreement or provisions hereof to be void as violating the rule against perpetuities.

14.16. Attorneys' Fees. In any action or undertaking between the parties hereto to enforce the provisions of this Agreement, each of the parties hereto shall bear its own attorneys' fees.

14.17. Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

14.18. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent certified mail, postage prepaid and addressed as follows:

If to City:                    Jesús Armas, City Manager  
                                          City of Hayward  
                                          777 "B" Street  
                                          Hayward, CA 94541-5007

With a copy to:                Michael O'Toole, City Attorney  
                                          City of Hayward  
                                          777 "B" Street  
                                          Hayward, CA 94541-5007

If to Owner:                    Morey Greenstein  
                                          Executor and Trustee  
                                          39159 Paseo Padre Parkway, Suite 315  
                                          Fremont, CA 94538

With a copy to:                Jack Smith  
                                          Haley, Purchio, Sakai & Smith  
                                          22320 Foothill Boulevard  
                                          Hayward, CA 94543

And a copy to                    Michael B. Wilmar  
                                          Nossaman, Guthner, Knox & Elliott, LLP  
                                          50 California Street, 34<sup>th</sup> Floor  
                                          San Francisco, CA 94111

Any notice given as required herein shall be deemed given 72 hours after deposit in the United States mail or upon receipt. A party may change its address for notices by giving notice in writing to the other party as required herein and thereafter notices shall be addressed and transmitted to the new address.

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14.19. Counterparts. This Agreement may be executed by the parties in counterparts which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

OWNER: THE GORDON OLIVER TRUST AND ESTATE

By: \_\_\_\_\_  
Morey Greenstein  
Executor and Trustee

OWNER: THE ALDEN OLIVER TRUST

By: \_\_\_\_\_  
Morey Greenstein, Trustee

CITY: CITY OF HAYWARD

By: \_\_\_\_\_  
City Manager

Attest: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## EXHIBIT LIST

| <u>Exhibit Designation</u> | <u>Description</u>                             |
|----------------------------|------------------------------------------------|
| A                          | AFC&WCD Property                               |
| B                          | City Property                                  |
| C                          | Conditions of Approval                         |
| D                          | Development Guidelines                         |
| E                          | Ordinance No. 98-04                            |
| F                          | Ordinance No. 98-05                            |
| G                          | General Plan Amendment                         |
| H                          | Measure HH                                     |
| I                          | Mitigation Monitoring<br>and Reporting Program |
| J                          | The Property                                   |
| K                          | School Fee Mitigation<br>Agreement             |

**THE EXHIBITS ARE NOT ATTACHED TO THIS COPY  
OF THE DRAFT DEVELOPMENT AGREEMENT.**

**ALL EXHIBITS ARE AVAILABLE FOR REVIEW IN THE CLERK'S OFFICE.**

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