City of San Leandro

Meeting Date: April 21, 2014

Ordinance

File Number: 14-107 **Agenda Section:** CONSENT CALENDAR

Agenda Number: 8.B.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: ORDINANCE Approving a Rezoning, a Planned Development and a Site Plan Review, and a Development Agreement for the Downtown Office/Technology Campus Project, 1333 Martinez Street (PLN 2013-00045)

RECITALS

WHEREAS, Westlake Development Partners, LLC (the "Applicant") submitted an application for a multi-phase, transit-oriented development project located adjacent to the Downtown San Leandro BART Station (PLN 2013-00045) ("Project") consisting of 340,000 to 500,000 square feet of multi-story office buildings and related on-site and off-site improvements including landscaping, bike path, pedestrian path, utilities and a multi-level parking structure, to be located on a 7.3-acre project site that encompasses four separate parcels and vacated City rights-of way, identified as 1333 Martinez Street. The Project includes applications for an amendment to the Zoning Map (the "Zoning Map"), a Planned Development/Site Plan Review Permit, and a Development Agreement; and

WHEREAS, the majority of the proposed site for the Project is a relatively flat portion of the City that was formerly occupied by a Del Monte canning facility but has been vacant for over 20 years; and

WHEREAS, the proposed Project site is currently zoned DA-5(S) Downtown Area, Special Overlay District and PS(S) Public and Semipublic, Special Overlay District and has a General Plan designation of Office "OF". The proposed Project site is surrounded by the San Leandro BART station to the east; by Alvarado Street to the west; by West Estudillo Avenue on the north; and by Thornton Street on the south. In addition, the site has railroad tracks on the east and west edges of the Project site. Moreover, the Project site is included in the San Leandro Downtown Transit Oriented Development Strategy ("TOD Strategy") and is within walking distance to the City's Downtown; and

WHEREAS, the Planning Commission held a noticed work session regarding the

proposed Project on August 15, 2013; and

WHEREAS, the City prepared an Initial Study consistent with CEQA Guidelines section 15070 and determined a Mitigated Negative Declaration was required in order to analyze the potential for significant impacts of the Project which was circulated for public review from January 20, 2014 to February 19, 2014; and

WHEREAS, the Planning Commission reviewed the staff report and the draft Mitigated Negative Declaration (Exhibit 1) and is of the opinion that the draft Mitigated Negative Declaration, including comments, reflects the City's independent judgment and analysis on the potential for environmental impacts from the Project; and

WHEREAS, location and custodian of the draft Mitigated Negative Declaration, including comments, and other documents that constitute a record of proceedings for the Project is the City of San Leandro, 835 East 14th Street, San Leandro, California 94577; and

WHEREAS, the Project may have potential significant environmental impacts; however, proposed mitigation measures have been incorporated into the Project to reduce these impacts to a less than significant level; and

WHEREAS, the Zoning Map currently designates the Project site as DA-5(S) Downtown Area, Special Overlay District and PS(S) Public and Semipublic, Special Overlay District. The Zoning Map should be amended to DA-5(S)(PD) Downtown Area, Special Overlay, Planned Development Overlay District and PS(S)(PD) Public and Semipublic, Special Overlay, Planned Development Overlay District as set forth in Exhibit 2; and

WHEREAS, the Project also requires a Planned Development and Site Plan Review Project Approval, pursuant to 3-1012 and 5-2506 of the Zoning Code, respectively, and satisfies all the requisite findings as further explained in the staff report associated with this Ordinance; and

WHEREAS, the Applicant requests the execution of a proposed Development Agreement, attached hereto and incorporated herein as Exhibit 4 that would vest the Project applications upon execution; and

WHEREAS, the City's General Plan and the Zoning Code, are incorporated herein by reference, and are available for review at City Hall during normal business hours.

NOW, THEREFORE, the City Council of the City of San Leandro does **ORDAIN** as follows:

SECTION 1. ADOPTION OF THE ZONING MAP AMENDMENT. Based on the entirety of the record, as described above, the Property described as 1333 Martinez Street, Assessor's Parcel Numbers 75-47-2, 75-47-7, 75-47-3-2, and 75-42-2-1, and Vacated and Disposed City rights-of-way is hereby reclassified from its current designation on the Zoning Map of DA-5(S) Downtown Area, Special Overlay District and PS(S) Public and Semipublic, Special Overlay District to DA-5(S)(PD) Downtown Area, Special Overlay, Planned Development Overlay District and PS(S)(PD) Public and Semipublic, Special Overlay,

Planned Development Overlay District, as further set forth in Exhibit 2, attached hereto and incorporated herein by reference, and filed in the office of the City Clerk on March 17, 2014.

SECTION 2. FINDINGS FOR THE PLANNED DEVELOPMENT/SITE PLAN REVIEW. Based on the entirety of the record, as described above, and after the public hearing, the City Council finds and determines that the proposed office development and related improvements are in accord with the objectives of the Zoning Code; will be consistent with the General Plan; will not be detrimental to public health, safety, or welfare of persons in the immediate area; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City per sections 3-1012, 3-1020, 5-2212, 5-2214, 5-2512, and 5-2514; and the City Council approves the Planned Development/Site Plan Review subject to the Recommended Conditions of Approval as further set forth in Exhibit 3, attached hereto and incorporated herein by reference.

SECTION 3. FINDINGS FOR THE DEVELOPMENT AGREEMENT. On the basis of the foregoing Recitals which are incorporated herein, the City of San Leandro General Plan, and the staff report incorporated herewith, and on the basis of the specific conclusions set forth below, the City Council finds and determines that:

a. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified and contained in the City's General Plan (as proposed for amendment) land use designation for the site as Office; the Project is also consistent with the fiscal policies of the General Plan with respect to the provision of infrastructure and public services, and the Development Agreement includes provisions relating to vesting of development rights.

b. The Development Agreement is in conformity with public convenience, general welfare, and good land use policies in that the Project will implement land use guidelines set forth in the General Plan.

c. The Development Agreement will not be detrimental to the health, safety and general welfare in that the Project will proceed in accordance with all the programs and policies of the General Plan as well as any Conditions of Approval for the Project.

d. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values in that the project will be consistent with the General Plan.

SECTION 4. APPROVAL OF THE DEVELOPMENT AGREEMENT. The City Council hereby approves the Development Agreement attached hereto and incorporated herein as Exhibit D, and authorizes the City Manager to execute it.

SECTION 5. RECORDATION OF THE DEVELOPMENT AGREEMENT. Within ten (10) days after the Development Agreement is fully executed by all parties, the City Clerk shall submit the executed Development Agreement to the County Recorder for recordation.

SECTION 6. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance,

is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

SECTION 7. EFFECTIVE DATE AND PUBLICATION. This ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption.

Introduced by Councilmember Gregory on this 7th day of April, 2014, and passed to print by the following called vote:

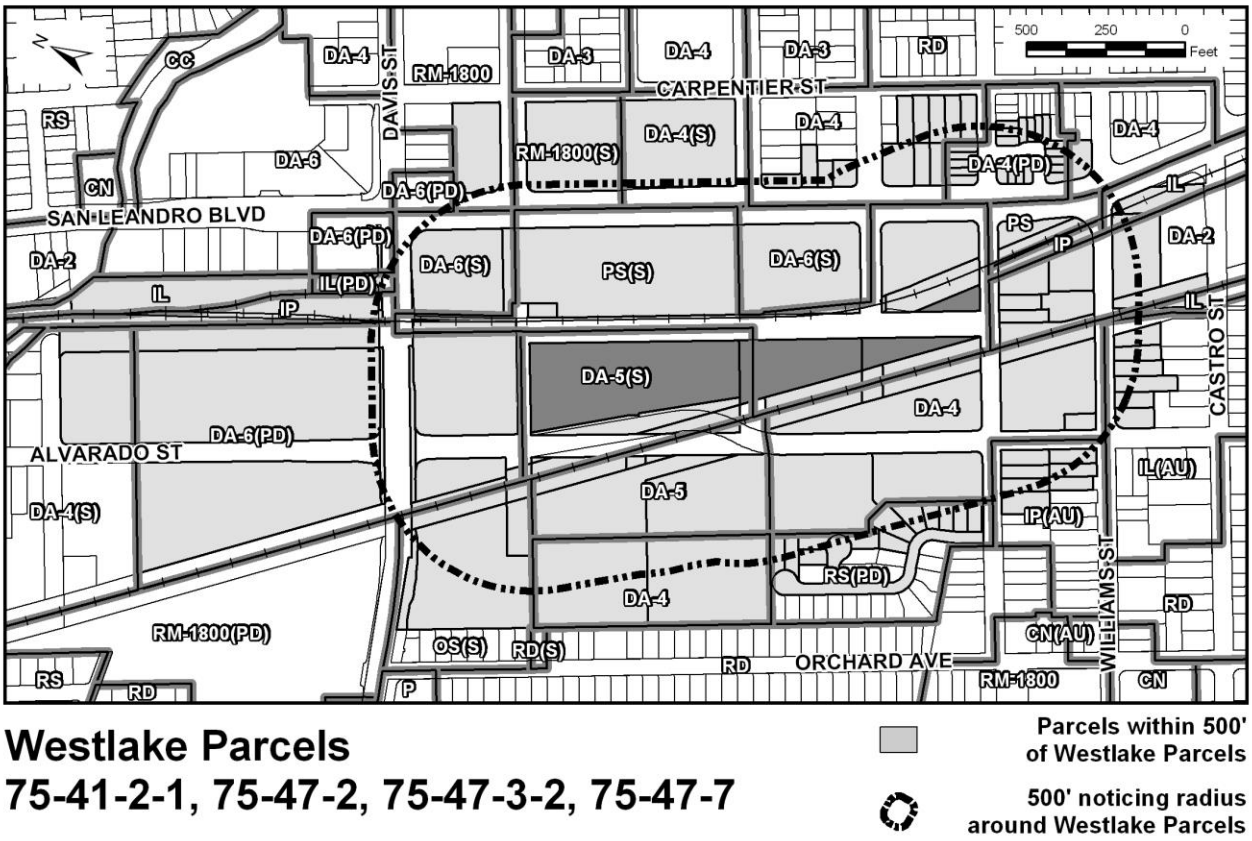
Members of the Council:

AYES:	Councilmembers Cutter, Gregory, Lee, Prola, Reed, Souza; Mayor Cassidy	(7)
NOES:	None	(0)
ABSENT:	None	(0)

Exhibit 2

Zoning Map Amendment

MAP ATTACHMENT TO AN
AN ORDINANCE REZONING CERTAIN PROPERTY HEREIN DESCRIBED
AS TO ZONING DISTRICT AND AMENDING ZONING MAP
(PLN2013-00045) 1333 MARTINEZ STREET
ASSESSOR'S PARCEL NUMBERS 75-47-2, 75-47-7, 75-47-3-2, and 75-42-2-1



MAP ABOVE IS A PORTION OF CITY OF SAN LEANDRO OFFICIAL ZONING MAP, SHEET A2

Note: The properties 1333 Martinez Street (highlighted above in the map) are hereby reclassified from the DA-5(S) Downtown Area, Special Overlay District and PS(S) Public and Semipublic, Special Overlay District to DA-5(S)(PD) Downtown Area, Special Overlay, Planned Development Overlay District and PS(S)(PD) Public and Semipublic, Special Overlay, Planned Development Overlay District.

Exhibit 3

Recommended Conditions of Approval for Planned Development And Site Plan Review

RECOMMENDED
CONDITIONS OF APPROVAL

PLN2013-00045; Planned Development and Site Plan Review Permit,
1333 Martinez Street
Alameda County Assessor's Parcel Numbers 75-47-2, 75-47-7, 75-47-3-2; and 75-42-2-1
Westlake Development Partners, LLC (applicant)
Chang Income Property Partnership, LP (property owner)

I. COMPLIANCE WITH APPROVED PLANS

A. The project shall comply with Exhibits A through AA, dated February 20, 2014, and Exhibit BB, dated March 14, 2014, except as hereinafter modified. (Exhibits are on file at the City of San Leandro, Community Development Department, 835 East 14th Street, San Leandro, California, 94577).

Exhibit A – Project Title and Data (Sheet G1)
Exhibit B – Site Plan Phase 1 (Sheet A1.1)
Exhibit C – Site Plan Phase 2 (Sheet A1.2)
Exhibit D – Site Plan Phase 3 (Sheet A1.3)
Exhibit E – Elevations Phases 1, 2 and 3 (Sheet A3.1)
Exhibit F – Signage Program and Parking Deck Elevations (Sheet A3.2)
Exhibit G – Elevations – Garage Options (Sheet A3.3)
Exhibit H – Enlarged Elevations (Sheet A4.1)
Exhibit I – Views and Rendered 3 Level Garage (Sheet A5.1)
Exhibit J – Views and Rendered 6 Level Garage (Sheet A5.2)
Exhibit K – Palette for Lighting, Furniture and Materials (Sheet A6.1)
Exhibit L – Civil Engineering Title Sheet Floor (Sheet C-1)
Exhibit M – Civil Engineering Overall Site Plan (Sheet C-2)
Exhibit N – Civil Engineering Phase 1 Preliminary Site Plan (Sheet C-3)
Exhibit O – Civil Engineering Phase 1 Preliminary Site Plan (Sheet C-4)
Exhibit P – Civil Engineering Phase 1 Preliminary Site Plan (Sheet C-5)
Exhibit Q – Civil Engineering Phase 2 Preliminary Site Plan (Sheet C-6)
Exhibit R– Civil Engineering Phase 3 Preliminary Site Plan (Sheet C-7)
Exhibit S – Landscape Plan Overall Phase 1 & 2 (Sheet L101)
Exhibit T – Landscape Plan Overall Phase 3 (Sheet L102)
Exhibit U – Landscape Plan Enlargement Phase 1 (Sheet L201)
Exhibit V – Landscape Plan Enlargement Phase 2 (Sheet L202)
Exhibit W – Landscape Plan Enlargement Phase 3 (Sheet L203)
Exhibit X – Plant Palette (Sheet L301)
Exhibit Y – Plant List (Sheet L302)
Exhibit Z – Landscape Features (Sheet L401)
Exhibit AA – Landscape Sections (Sheet L402)
Exhibit BB – Partial Site Plan Phase 3 - Public Space (Sheet SK-006-1)

B. The developer shall be responsible for assuring that any successor in interest who assumes responsibility for this zoning approval is informed of its terms and conditions.

II. PERMITTED USE

A. This is an approval for a Planned Development and Site Plan Review to develop an Office/Technology Campus with up to a maximum of 500,000 square feet of office and other related uses located in multiple buildings on the 7.3-acre project site that encompasses four separate parcels, identified as 1333 Martinez Street. The development will occur in three phases which includes five to six-story technology-focused office buildings and related site improvements such as on-site and off-site landscaping, bike path, pedestrian path, and utilities; surface parking for the development of Phase 1 while future phases will require the construction of a multi-level parking structure. Alameda County Assessor's Parcel Numbers 75-47-2, 75-47-7, 75-47-3-2, and 75-42-2-1.

B. No application for amendment of the application or Conditions of Approval may be submitted or accepted for processing by the city unless (i) there is full compliance with all other legally binding documents regulating development on the property; and (ii) there is full compliance with all terms of the application and Conditions of Approval, or (iii) the Community Development Director has waived compliance with the terms of the application because they are minor in content.

C. Construction of the project shall remain in substantial compliance with the approved exhibits and plans. Any change to the project design, materials or colors shall be subject to the review and approval of the Community Development Director who may administratively approve minor changes, or for more substantial changes, require review by the Planning Commission and City Council as a modification to the Planned Development.

III. ADDITIONAL PLAN SUBMITTALS

A. Prior to issuance of building permits, the developer shall submit final details and specifications to the bicycle and pedestrian path including, but not limited to: ground markings, ground patterns, symbols, posted signs, pedestrian area and bicycle riding area, and shall be subject to the review and approval of the Engineering and Transportation Director.

B. Prior to issuance of building permits for each building and the parking structure, the developer shall submit final exterior architectural elevations, details and specifications including, but not limited to: materials, colors and finishes for the review and approval of the Community Development Director.

C. Prior to issuance of building permits, the developer shall submit final landscape and irrigation plans for the review and approval of the Community Development Director. The plans shall include such details as, 1) tree size, species and location; 2) shrubs and groundcovers; 3) installation specifications, including tree staking; 4) irrigation details; 5) water conservation techniques; and 6) maintenance programs. Final landscape and irrigation plans shall conform to the Water Efficient Landscape Ordinance as codified in

Article 19 of the San Leandro Zoning Code. **In addition, the developer shall work with City staff to produce a landscape plan and plantings for the east edge of the parking structure so it shall be well landscaped to create a striking sense of place and a strong identity for the elements of the site that face the BART station.** ***(Added by the Planning Commission on February 20, 2014.).***

D. Prior to issuance of building permits, the developer shall submit final details and specifications for any freestanding or exterior trash enclosure structures. Said details and specifications shall be designed to blend in and complement the office building or parking structure, to the satisfaction of the Community Development Director.

E. Prior to issuance of building permits, the developer shall submit final plans and details for site lighting (including submittal of a photometric study) for the review and approval of the Community Development Director. The plans and details shall show location, height, decorative features, and construction details showing materials and finishes to be used for construction. No site lighting may spill offsite.

F. The Developer shall work with the City, and occupants of the project, to reduce car trips and encourage use of alternate modes of transportation, including but not limited to ~~one~~ **two** or more of the following (1) providing employee transit pass subsidy, (2) including bike storage in the project, (3) including showers and lockers for bike riders in the project, (4) requiring tenants to designate staff as Transportation Demand Management (TDM) coordinator and (5) implementing carpooling programs and car sharing. Developer shall develop a TDM Program or Plan for each phase to the satisfaction of the Community Development Director and Engineering and Transportation Director no later than the issuance of the first certificate of occupancy for Phase 1 improvements. ***(Amended by the Planning Commission on February 20, 2014.).***

IV. MITIGATION OF ENVIRONMENTAL IMPACTS

A. All mitigation measures indicated in the Mitigated Negative Declaration shall be included and are hereby incorporated as Conditions of Approval. Said mitigation measures are also listed in the Mitigation Monitoring Plan and the developer shall comply with and implement all provisions of said Mitigation Monitoring Plan.

1. **Mitigation Measure #1:** The applicant shall cooperate with the appropriate regional, state and federal agencies to implement the regional Clean Air Plan and enforce air quality standards in compliance with General Plan Policy 31.01.

2. **Mitigation Measure #2:** The applicant shall promote strategies that help improve air quality by reducing the necessity of driving, such as programs for carpooling and vanpooling, better provisions for bicyclists and pedestrians, and implementing mixed use and higher density development around transit stations in compliance with General Plan Policy 31.02.

3. **Mitigation Measure #3:** The applicant shall conduct pre-construction surveys for the presence of nesting birds within each of the project sites. The project applicant shall retain a qualified biologist to conduct a pre-construction breeding-season survey (approximately February 1 through August 31) to determine if any

birds are nesting on or directly adjacent to the project area. The survey shall be conducted during the same calendar year that construction is planned to begin. If no nesting birds are found, no further action would be required.

If nesting birds are found within the trees on or directly adjacent to the project area, the project applicant shall avoid all birds nest sites located in the project area during the breeding season (approximately February 1 through August 31), or until it is determined by a qualified biologist that all young have fully fledged (left the nest). If the construction cannot be delayed, avoidance shall include the establishment of a non-disturbance buffer zone around the nest site. The size of the buffer zone will be determined in consultation with the CDFG. The buffer zone shall be delineated by highly visible temporary construction fencing, and shall remain in place until it is determined by a qualified biologist that all young have fully fledged (left the nest).

4. **Mitigation Measure #4:** The applicant shall cease any grading or construction activities and shall consult with appropriate representatives of the Native American Heritage Commission if human remains are discovered, in accordance with State Law and Section 7050.5 of the Health and Safety Code, Section 15064.5 (e) of the State CEQA Guidelines and Section 5097.98 of the Public Resources Code.

5. **Mitigation Measure #5:** The City of San Leandro has incorporated the 2012 International Building Code into its municipal building code (Title 7, Chapter 7-5). The project applicant would be required to comply with all applicable State and City regulations to address potential geologic hazards associated with the proposed project, including ground shaking and liquefaction. Geotechnical and seismic design criteria must conform to engineering recommendations in accordance with the seismic requirements of the 2013 San Leandro Building Code. Additionally, because the project site is in a liquefaction Seismic Hazard Zone, the project applicant will be required to comply with the guidelines set forth by California Geological Survey Special Publication 117.

6. **Mitigation #6:** Applicant shall be required to excavate, remove and recompact potentially liquefiable soil. In-site ground densification, for example, compaction with vibratory probes, dynamic consolidation, compaction piles, compaction grouting, etc., shall be conducted. Ground modification techniques, such as permeation grouting, columnar jet grouting, deep soil mixing, stone columns, gravel or other drains shall be implemented, and deep foundations shall be put in place to mitigate potential liquefaction-induced settlement impacts. Implementation of Mitigation Measure #6 reduces potential impacts to a less than significant level.

7. **Mitigation Measure #7:** (Subsurface Investigations)
Subsurface investigations are required prior to development of the San Leandro Downtown Tech Campus. The sampling and analysis programs will be specific to each site based on the prior uses of that site. Additional groundwater sampling and analysis program will be implemented if necessary for chemical constituents that could have migrated onto the sites from off-site upgradient sources, if

identified during due diligence. Detection limits for the analytical program will be sufficiently low to allow assessment of risks to human health under construction worker and residential exposure scenarios.

If the subsurface investigation programs yield data suggesting that there could be unacceptable risks to future construction workers or residents, a California state environmental regulatory agency will be consulted to provide its opinion on the findings of the subsurface investigations and the assessment of risk. This opinion would be sought prior to initiating construction.

8. **Mitigation Measure #8:** (Pre Development Mitigation Measures)

If the subsurface investigation programs yield data suggesting that there could be unacceptable risks to future construction workers or residents and a California state environmental regulatory agency determines that an active remedial response is warranted, the following mitigation measures listed below include methods that may be employed to mitigate unacceptable risks to human health of construction works and future residents.

Remove the impacted soil and dispose of off-Site;
Install a cap to prevent contact with the contamination;
Install a physical barrier for vapors such as a vapor barrier or passive venting system, to prevent the accumulation of vapors in indoor environment;
Stockpile soil and aerate on-Site, or in a staging area as may be appropriate, in compliance with all applicable laws and regulations;
Conduct in situ bioremediation measures; or
Implement liquid or vapor extraction measures.

The appropriateness of one of the above management measures over another will depend on many factors, such as the type of constituent detected, the size of the identified impacted area, and the estimated cost of implementing the remedy.

Results of the sampling activities and the proposed course of action, e.g., no action necessary, soil excavation and off-site disposal, on-site treatment and soil reuse, shall be reported to a State environmental regulatory agency and the contractor shall obtain concurrence before implementing the remedial measures.

Remedial action plans would be approved in advance by a state environmental regulatory agency. Any cleanup or remediation would be required to meet applicable federal, state and local laws, regulations and requirements.

9. **Mitigation Measure #9:** (Risk Management Measures for Construction Phases)

The following are risk management procedures to be followed by future contractors during site preparation and construction activities. General soil management protocols are presented; as well as, protocols for managing fill soils that may be brought to the Sites during filling operations.

- Pre-Construction Planning and Notification: Prior to the start of construction activities involving below-ground work, information regarding known areas of contamination shall be provided to the contractor by the Site owner.
- Site-Specific Health and Safety Worker Requirements: Each contractor will be responsible for the health and safety of their own workers, including, but not limited to, preparation of their own health and safety plan (HSP) and injury and illness prevention plan (IIPP). The purpose of these documents is to provide general guidance to the work hazards that may be encountered during each phase of construction activities
- Contractors are also required to determine the requirements for worker training, based on the level of expected contact to soil, soil vapor, and groundwater associated with the contractor's activities and locations. The HSP shall contain provisions for limiting and monitoring chemical exposure to construction workers, chemical and non-chemical hazards, emergency procedures, and standard safety protocols. Depending upon known conditions at the time of site development, employees conducting earthwork activities at the Site may be required to complete a 40-hour HAZWOPER training course (29 CFR 1910.120 (e)), including respirator and personal protective equipment training.
- Construction Impact Mitigation Measures: During construction, measures shall be taken by contractors to minimize dust generation, storm water runoff and tracking of soil off the Sites. In addition, measures will be taken to reduce the potential for the creation of preferential pathways (vertical or horizontal) for COPCs detected at the Sites during the planned subsurface investigations of soil, soil gas and/or groundwater beneath the Sites. Construction impact mitigation measures are described below.
- Site Control: Site control procedures shall be implemented to control the flow of personnel, vehicles and materials in and out of the Sites while working in known contaminated areas. (Currently, there are no known contaminated areas.) The control measures described below will help control the spread of COPCs.
- The perimeter of the sites shall be fenced. Access and egress shall be controlled at the appropriate locations. Signs will be posted instructing visitors to sign in at the project support areas at all site entrances.
- Equipment Decontamination: Contractors whose vehicles and construction equipment contact soil that is suspected of being contaminated shall be required to clean the equipment upon leaving the contaminated area. A decontamination area will be established near the construction exit of each area. Soil will be removed from the equipment and vehicles before leaving the contaminated area. Cleaning methods used may include dry methods, such as brushing, scraping, or vacuuming. If dry methods are not effective, wet methods, such as steam cleaning or pressure-washing, should be used. The contractor will contain, manage, and collect samples of the rinse water for analytical testing by a state certified laboratory prior to appropriate disposal. Decontamination procedures shall be developed and implemented by the construction contractor to minimize the possibility that equipment releases contaminated soil onto public roadways or to on-Site areas containing "clean" cover materials or new paving.
- Personal Protective Equipment: Personal Protective Equipment (PPE) and clothing shall be used to isolate workers from COPCs and physical hazards. The

minimum level of protection for workers coming into direct contact with contaminated materials will be Level D:

- Coveralls or similar clothing,
- Reflective safety vests,
- Work gloves, as necessary,
- Steel-toed boots,
- Safety glasses, as necessary,
- Hard hat, and
- Hearing protection, as necessary.

- Dust Control: Construction operations will be conducted to minimize the creation and dispersion of dust, including the following measures:

  - Application of water while grading, excavating, and loading, as needed;
  - Limiting vehicle speeds to 15 miles per hour on unpaved portions of the Sites;
  - Minimizing drop heights while loading/unloading soil; and,
  - Soil that is suspected of being contaminated will be covered by an impermeable layer.
  - Additional dust control measures may be identified and implemented by contractors, as necessary, especially if dry and windy conditions persist during periods of earthwork.
  - Compliance with all Bay Area Air Quality Management District rules and regulations.

  - Vertical and Horizontal Preferential Pathways: If development plans include the construction of deep foundations, the foundation of the buildings shall incorporate measures to help reduce the potential for the downward migration of contaminated groundwater. These measures shall be identified in the site-specific geotechnical investigation reports. Appropriate measures shall be implemented to reduce vapor migration through trench backfill and utility conduits. Such measures may include placement of low-permeability backfill "plugs" at intervals on-site and where utilities extend off current parcel boundaries.

  - Storm Water Pollution Controls: A storm water pollution prevention plan (SWPPP) will be required to be prepared for the site. Storm water pollution controls shall be based on best management practices (BMPs), such as those described in "Guidelines for Construction Projects" and "Erosion and Sediment Control Field Manual" published by the San Francisco Regional Water Quality Control Board.

  - Excavation De-Watering: Although not anticipated, if excavation de-watering is required, the water will be sampled and analyzed prior to pumping to evaluate discharge alternatives. The developer's environmental consultant shall collect a sample of the water for laboratory analyses for COPCs; other

analyses may be required, based on the intended disposal or re-use of the water.

- Additional Soil Management Protocols During Construction Activities: Soil with residual COPCs may be present on-site. Subsurface investigations planned for the Sites will determine the presence or absence of COPCs in soils. Once soils are tested, a Site specific soil management plan (SMP) will be prepared. At the present time, there are no known chemical source areas or areas of soil contamination on either Site. The protocols to be followed in the event that unknown areas of contamination are identified during development are described in this section.

- Procedures for Discovery of Unknown Areas of Contamination: Site development activities may result in the identification of previously unknown areas or types of contamination. Unknown conditions which may trigger contingency monitoring procedures during site development include, but are not limited to, the following**:**

    - Oily, shiny, or chemical saturated soils;
    - Soil with a significant chemical or hydrocarbon-like odor; or
    - Significantly discolored soils.

Upon the discovery of one of the conditions identified above, the contractor will conduct the contingency monitoring. Contingency monitoring, if conducted, will consist of the following steps: If unknown areas of potential discolored soils are encountered, additional analyses should be conducted for the suspected constituents to assess the actual composition of the suspected contamination. A State environmental regulatory agency should be contacted for assistance in determining if additional sampling and potential mitigation is necessary. If the encountered materials are suspected to contain volatile organic chemicals, the following contingency monitoring procedures may be followed:

Conduct contingency monitoring by taking organic vapor readings using an organic vapor meter (OVM) or an organic vapor analyzer (OVA) to screen for the presence of fuel, oil, or solvents. If the OVM/OVA indicates that an unknown area of fuel, oil, or solvents has been detected, then a State environmental regulatory agency should be notified to determine if additional sampling is appropriate prior to continuing construction in that area. OVM or equivalent screening methods will be conducted by experienced personnel only.

If an unknown area of soil contamination has been identified, and the State environmental regulatory agency requests additional characterization, the following steps will be taken**:**

- Soil samples will be collected from the identified area and analyzed for the likely COPC, depending on the suspected type of contamination. The sampling strategy will be discussed with a State environmental regulatory agency prior to the initiation of the sampling activities. Analytical results collected from the suspected source will be compared to the health-based

screening levels and results discussed with a State environmental regulatory agency. If the levels are below the relevant health-based screening levels and the State environmental regulatory agency concurs, no additional action may be necessary.

- If the soil contains COPCs at levels that exceed the relevant health-based screening levels, or if the State regulatory agency concludes that an unacceptable risk to construction worker or future residents may be present, then management measures, such as the following, will be undertaken**:**

    - Remove the impacted soil and dispose of off-Site;
    - Install a cap to prevent contact with the contamination;
    - Install a physical barrier for vapors such as a vapor barrier or passive venting system, to prevent the accumulation of vapors in indoor environment;
    - Stockpile soil and aerate on-Site, or in a staging area as may be appropriate, in compliance with all applicable laws and regulations;
    - Conduct in situ bioremediation measures; or
    - Implement liquid or vapor extraction measures**.**

The appropriateness of one of the above management measures over another will depend on many factors, such as the type of constituent detected, the size of the identified impacted area, and the estimated cost of implementing the remedy.

Results of the sampling activities and the proposed course of action, e.g., no action necessary, soil excavation and off-site disposal, on-site treatment and soil reuse, shall be reported to a State environmental regulatory agency and the contractor shall obtain concurrence before implementing the remedial measures. Construction activities in the specific area where the unknown conditions were identified will resume following the completion of the additional sampling activities and the implementation of any required responses.

Any cleanup or remediation shall be required to meet applicable federal, state and local laws, regulations and requirements.

- Imported Fill: To minimize the potential introduction of contaminated fill, all imported fill shall have adequate documentation so it can be verified that the fill source is appropriate for the site's intended use. Documentation shall include detailed information on previous land use of the fill source, any Phase I Environmental Site Assessments performed and the findings, and the results of any analytical testing performed. If no documentation is available or the documentation is inadequate or if no analytical testing has been performed, samples of the potential fill material shall be collected and analyzed. The analyses selected shall be based on the fill source and knowledge of the previous land use as determined by the developer's environmental consultant. The sample frequency for potential fill material shall be in accordance with that outlined in the Department of Toxic Substances Control technical document titled, "Information Advisory on Clean Imported Fill Material".

The developer's environmental consultant shall approve the use of imported fill.

10. **Mitigation Measure #10:** Prior to issuance of a grading permit, the project applicant must prepare and implement an erosion and sediment control plan (ESCP) including interim and permanent erosion and sediment control measures, and a pollutant control plan (PCP).

11. **Mitigation Measure #11:** Prior to issuance of a grading permit, the project applicant shall file the required documentation to the State Water Resources Quality Board and prepare a Storm Water Pollutant Prevention Plan (SWPPP) which will be reviewed and approved by the City Engineer. The City Engineer must conduct inspections prior to issuing a certificate of occupancy, to ensure that requirements are complied with.

12. **Mitigation Measure #12:** The applicant will comply with applicable waste discharge requirements and municipal code requirements including preparation of a SWPPP for construction activities and compliance with the Alameda Countywide Clean Water Program (ACCWP). These permit programs are designed to prevent violation of water quality standards through mitigation and control of pollutant transport in storm water runoff and infiltrating waters. The City of San Leandro Municipal Code ensures that permit conditions are met.

13. **Mitigation Measure #13:** Applicant shall be required to demonstrate adequacy of the existing storm drain system to handle existing run-off from the drainage basin as well as run-off from the project, upgrade the storm drain system to handle existing run-off from the drainage basin as well as run-off from the project, or meter run-off from the site so that it leaves the site at the same rate as it currently does.

14. **Mitigation Measure #14:** Applicant shall remove pollutants from storm water prior to discharging the water from the site per the current NPDES permit

15. **Mitigation Measure #15:** All commercial construction shall comply with the City's existing building codes related to sound attenuation.

16. **Mitigation Measure #16:** All construction activity shall comply with the City's Noise Ordinance (Municipal Code Chapter 4-1, Section 11) so as not to make or cause disturbing, excessive or offensive noise which causes annoyance or discomfort to persons.

17. **Mitigation Measure #17:** The minimum levels of service standards for police and fire response times shall be maintained in accordance with General Plan Policy 45.01.

18. **Mitigation Measure #18:** The applicant shall incorporate lighting, landscaping and other design features that reduce the potential for crime and facilitate rapid response to emergency calls in accordance with General Plan Policy 45.06.

19. **Mitigation Measure #19:** The significant impact at this intersection during the PM peak hour can be mitigated by restriping the eastbound approach to be two lanes, a shared left through lane and a shared through-right lane. These improvements would occur within the existing right-of-way. This mitigation measure results in the intersection operating at LOS E during the PM peak-hour. Therefore, this impact is less than significant.

20. **Mitigation Measure #20:** The applicant shall promote the efficient use of existing water supplies through a variety of water conservation measures, including evaluating the potential for the use of recycled water for landscaping in accordance with General Plan Policy 27.02.

21. **Mitigation Measure #21:** The applicant shall conserve water through the use of such measures as low-flow plumbing fixtures and water-saving appliances in accordance with General Plan Policy 27.04.

22. **Mitigation Measure #22:** The applicant shall be required to pay its fair share of the cost of improving the water, sewer, drainage and other infrastructure systems needed to serve the development through use fees or other appropriate forms of mitigation in accordance with General Plan Policy 52.02.

23. **Mitigation Measure** #23: American Disabilities Act (ADA)–compliant Detectable Warning Devices (Truncated Domes), bike lanes, pedestrian channelization barriers and swing gates shall be installed at the Davis Street crossing (DOT#749728V). Fencing the railroad right-of-way must be considered in order to prevent pedestrians from crossing the railroad tracks in unsafe locations.

24. **Mitigation Measure** #24: ADA detectable warning devices are to be installed on all sidewalks approaches near the Davis Street crossing in the proximity of the project site (DOT#834250S). In addition, fencing the railroad right-of-way must be considered in order to prevent pedestrians from crossing the railroad tracks in unsafe locations.

25. **Mitigation Measure** #25: Improve the Alvarado Street crossing (DOT#912075T) by adding pedestrian channelization barriers and swing gates.

26. **Mitigation Measure** #26: ADA detectable warning devices are to be installed on all sidewalks approaches near the Thornton Street crossing in the proximity of the project site (DOT#834254U). In addition, parking shall be restricted within 70 feet of the railroad crossing.

27. **Mitigation Measure** #27: ADA detectable warning devices are to be installed on all sidewalks approaches near the Parrott Street crossing in the proximity of the project site (DOT#834253M). In addition, parking shall be restricted within 70 feet of the railroad crossing.

28. **Mitigation Measure** #28: Pavement markings and signage on the proximal railroad crossings are to be verified that they are in compliance with the California Manual on Uniform Traffic Control Devices.

V. BUILDING AND SAFETY SERVICES CONDITIONS

A. Prior to approval of the final building plans for building permits, the developer shall submit evidence of compliance with Title 24 Code, to the satisfaction of the Building Official.

B. Prior to approval of building permits, the developer shall submit evidence of compliance with the California Building Code related to the following accessibility requirements:

1. Accessible path of travel from nearest public bus stop to the site is required.
2. The entire site shall be made accessible.
3. Accessible path of travel is required to trash enclosures.
4. Common public areas such as recreation areas and parking areas shall be accessible as per CBC Chapter 11B.

C. The developer shall employ the engineer responsible for the structural design, or another engineer designated by the engineer responsible for the structural design, to perform structural observation in accordance with the Building Code. Structural observation means the visual observation of the structural system, for general conformance to the approved plans and specifications at significant construction stages and at completion of the structural system.

D. In addition to the inspections required by the Building Code, the developer or the engineer or architect of record acting as the developer's agent shall employ one or more special inspectors who shall provide inspections during construction as required by the California Building Code. The special inspector shall be approved by the Chief Building Official. Per City Ordinance, the City reserves the right to impose structural standards that exceed the requirements of the Uniform Building Code.

E. Final building plans submitted for building permit shall incorporate a range of water conservation measures to substantially reduce average per capita daily use. These measures shall include the use of equipment, devices and methods for plumbing fixtures and irrigation that provide for long-term efficient water use, subject to the review and approval of the Building Official.

VI. ENGINEERING & TRANSPORTATION DEPARTMENT REQUIREMENTS

A. Pursuant to Government Code Section 66020, including Section 66020 (d) (1), the City HEREBY NOTIFIES the applicant for this Project that the 90-day approval period (in which the applicant may protest the imposition of any fees, dedications, reservations, or other exactions imposed on this Project by these Conditions of Approval) will begin on the date of the conditional approval of this Project. If the applicant fails to file a protest within this 90-day period, complying with all of the requirements of Government Code Section 66020, the applicant will be legally barred from later challenging any such fees, dedications, reservations or other exactions.

B. Applicant shall submit, obtain approval, record, and pay review fees for a tract map to configure the property lines and easements as shown on the vesting tentative map and noted herein prior to issuance of building permits.

C. Applicant shall obtain an Encroachment Permit from the Engineering and Transportation Department and pay encroachment permit fees for work within the public right-of-way prior to the issuance of building permits for the project.

D. Applicant shall obtain a Grading Permit from the Engineering and Transportation Department and pay associated fees prior to obtaining a Building Permit. Applicant shall submit Erosion Control plans and a detailed maintenance plan for the post construction storm water treatment measures. Applicant shall implement all applicable items listed in the model list of source control measures, published by the Alameda Countywide Clean Water Program.

E. Applicant shall file a Notice of Intent and Storm Water Pollution Control Plan with the State Water Quality Control Board and shall comply with all requirements of the board prior to issuance of a Grading Permit by the City.

F. If the design of any site improvement requires encroachments onto neighboring properties during construction, Applicant shall submit written agreements with that property owner to the City Engineer, for review and approval, prior to approval of the building permit.

G. Applicant shall pay design review fees, permit fees, inspection fees, sewer connection fees, and any other fees charged by the City or other reviewing agencies for the review, approval, permitting and inspection of the public and private improvements.

H. Applicant shall pay the Development Fee for Street Improvements (DFSI) ~~prior to issuance of a building permit~~ **upon issuance of Certificate of Occupancy**. ~~This fee is due when the building permit is issued.~~ Fees for buildings on other phases will be determined when building permits are issued for remaining, proposed buildings. ***(Amended by the Planning Commission on February 20, 2014.).***

I. The proposed development shall comply with City ordinances, policies and regulations. All public and private site improvements shall be in accordance with the City's Design Standards, Specifications and Standard Plans unless otherwise specifically approved by the City Engineer.

J. Applicant shall have public and private site improvements designed and stamped by a civil engineer registered to practice within the State of California. Applicant shall obtain approval of the City Engineer for all on and off site improvements prior to the issuance of Building Permits for the project. All improvements within the right of way shall be per City Standards. Improvements shall be designed so that storm water does not impact pedestrian travel along sidewalks or across streets.

K. Applicant shall either demonstrate the adequacy of the existing storm drain system to handle the existing run-off from the drainage basin as well as run-off from the project, upgrade the system to handle said flow, or meter run-off from the site so that peak flows in the system do not change.

L. Applicant shall conform to City standards. The drive aisle and parking spaces must be revised to meet City standards prior to issuance of a building permit.

M. Applicant shall locate all utilities serving the site underground.

N. Applicant shall comply with the regulations and provisions contained in the City's Grading Ordinance, the City's Storm Water Pollution Prevention Permit, and the National Pollutant Discharge Elimination System (NPDES), to the satisfaction of the City Engineer. More information may be found at www.cleanwaterprogram.org.

O. Applicant shall reduce storm water pollution by implementing the following pollution source control measures:

1. Structures shall be designed to discourage the occurrence and entry of pests into buildings, thus minimizing the need for pesticides. The trash area shall be separated from the rest of the building by concrete or masonry walls so that pests that gain access to the area are less likely to access the rest of the building.
2. All storm drains shall be marked "NO DUMPING, DRAINS TO BAY"
3. All on-site storm drains shall be inspected and, if necessary, cleaned at least twice a year immediately prior to the rainy season.
4. Sidewalks and parking lots shall be swept regularly to minimize the accumulation of litter and debris. Steam cleaning or low volume pressure washing may be performed only after pre-cleaning using dry methods, spot cleaning and recovery in stained areas and removal of all mobile pollutants. Debris resulting from pressure washing shall be trapped and collected to prevent entry into the storm drain system. Wash water containing any soap, cleaning agent or degreaser shall not be discharged to the storm drain.
5. Interior floor drains and parking garage floor drains (if any) shall not be connected to the storm drain system.
6. Air conditioning condensate shall be directed to landscaped areas. Any air conditioning condensate that discharges to land without flowing to a storm drain may be subject to the requirements of the State Water Resources Control Board's (SWRCB) Statewide General Waste Discharge Requirements (WDRs) for Discharges to Land with a Low Threat to Water Quality.
7. Landscaping shall be designed to minimize irrigation and runoff, promote surface infiltration where appropriate, and minimize the use of fertilizers and pesticides that can contribute to storm water pollution.
8. Where feasible, landscaping shall be designed and operated to treat storm water runoff by incorporating elements that collect, detain, and infiltrate runoff. In areas that provide detention of water, plants that are tolerant of saturated soil conditions and prolonged exposure to water shall be specified.

9. Plant materials selected shall be appropriate to site specific characteristics such as soil type, topography, climate, amount and timing of sunlight, prevailing winds, rainfall, air movement, patterns of land use, ecological consistency and plant interactions to ensure successful establishment.
10. Selection of the plants that will require minimal pesticide use.
11. Irrigation shall be appropriate to the water requirements of the selected plants.
12. Applicant shall select pest- and disease-resistant plants.
13. Applicant shall plant a diversity of species to prevent a potential pest infestation from affecting the entire landscaping plan.
14. Applicant shall plant "insectary" plants in the landscaping to attract and keep beneficial insects.

P. Applicant shall either construct all improvements as described herein, or provide security and enter into a subdivision improvement agreement with the City specifying the time of construction of all improvements, or enter into a cooperative improvement agreement with the City specifying which party will construct the improvements and the time of performance.

Q. Applicant shall enter into an agreement or construct the following work prior to issuance of building permits: move all existing utilities from the easement (that bisects the project) to be abandoned to the easement to be created. This work shall include installation of any manholes, inlets, pull boxes, and tie in work required to provide a complete, functioning utility. The replacement sanitary sewer shall be designed with due consideration of all existing deficiencies, including those listed in the 1993 Sanitary Sewer System Capability Study and Master Plan by Montgomery Watson.

R. Applicant shall enter into an agreement to pay the overhead conversion fee, or convert the existing utilities from overhead to underground along the entire frontage of all parcels included in the map to prior to acceptance of the final map.

S. Applicant shall enter into an agreement or construct the following work prior to issuance of certificate of occupancy: remove any unused driveways or damaged driveways, sidewalk, and curb and gutter along the full property frontage and construct new City standard driveway, sidewalk, curb and gutter in place of the removed items.

T. Applicant shall enter into an agreement or construct the following work prior to acceptance of the final map: improvements on Martinez Street, West Estudillo Street, and the pedestrian paseo as shown on the plans submitted with the application or to the extent required by the City Engineer.

U. Applicant shall maintain landscaping on all lots unless they are under construction, being used for construction staging, or covered by existing vegetation.

V. Applicant shall comply with the following high standards for sanitation during construction of improvements: Garbage cans, construction dumpsters, and debris piles shall be removed on a minimum weekly basis. All food related trash items such as wrappers, cans, bottles, and food scraps shall be disposed of in closed containers only and shall be regularly removed from the site. Inspections, conducted as part of the regular construction

compliance, will be conducted to ensure compliance of the Applicant and contractors with this requirement.

VII. FENCING AND SCREENING REQUIREMENTS

A. All fencing and walls on the project site shall be structurally sound, graffiti-free and well maintained at all times.

B. Barbed or razor wire shall not be installed on any fence, wall or building on the project site.

C. Electrical transformers shall be vaulted underground. In the event that the transformer cannot be undergrounded, it shall be screened from view consistent with the access requirements of PG&E. Details for screening shall be subject to the review and approval of the Community Development Director.

D. All walls, fences, and landscaping within 25 feet of any street intersection or driveway shall be maintained at a height of not more than 36 inches above the top of the nearest adjacent curb and gutter to allow for adequate sight distance, or unless otherwise approved by the City's Transportation Engineer.

VIII. MAINTENANCE

A. The project site shall be well maintained and shall be kept free of litter, debris and weeds at all times; during construction, the site shall be well maintained and shall be kept free of litter, debris and weeds.

B. Any graffiti shall be promptly removed from building walls, perimeter soundwalls and/or fences. The developer and its successors in interest shall comply with the rules and regulations of the City's graffiti removal program and shall grant a license and right of entry as requested to enforce the terms of such program.

C. All landscaping improvements shall be maintained in a healthy, growing condition at all times.

D. During the construction phase, the site shall be enclosed with a security fence and shall be well maintained in a neat manner, free of weeds, litter and debris.

IX. CONSTRUCTION PROVISIONS

A. Construction on the project site shall not commence prior to 7:00 a.m. and shall cease by 7:00 p.m., Monday through Friday, and shall not commence prior to 8 a.m. and shall cease by 7 p.m. Saturday and Sunday, unless otherwise approved by the Chief Building Official. There shall be no construction on Federal holidays. Interior construction such as sheet rock taping and texturing, painting, tile installation and similar activity shall be permitted outside the above hours provided that construction noise shall not be detectable outside of the buildings under construction or renovation.

B. Construction activity shall not create dust, noise or safety hazards for adjacent residents and properties. Dirt and mud shall not be tracked onto Alvarado Street, Davis Street, Parrott Street or Thornton Avenue from the project site during construction. Standard construction dust control procedures, such as wetting, daily roadwashing and other maintenance functions to control emissions, shall be implemented at all times during outdoor construction. Dust generating activities such as grading, excavation, paving etc., shall be scheduled the early morning and other hours when wind speeds are low. All construction activities entailing soil disturbance shall cease when winds exceed 30 miles per hour as an hourly average.

C. The developer shall prepare a construction truck route plan that would restrict trucks to arterial streets that have sufficient pavement section to bear the heavy truck traffic, thereby minimizing noise and traffic impacts to the community. The construction truck route plan shall be reviewed and approved by the City Transportation Administrator prior to receipt of the grading permit.

D. Truck hauling activities shall be restricted to 8:00 a.m. to 5:00 p.m. There shall be no truck hauling activity on Saturdays, Sundays and Federal holidays.

E. Procedures with the highest noise potential shall be scheduled for daylight hours, when ambient noise levels are highest.

F. The contractor(s) shall be required to employ the quietest among alternative equipment or to muffle/control noise from available equipment.

G. All construction contracts shall include the following requirements: 1) Unpaved construction sites shall be sprinkled with water at least twice per day; 2) Trucks hauling construction materials shall be covered with tarpaulins or other effective covers; 3) Streets surrounding demolition and construction sites shall be swept at least once per day; and 4) Paving and planting shall be done as soon as possible. City shall charge developer, and developer shall pay, for all costs of sweeping city streets in the vicinity of the project as necessary to control dust and spillage.

H. The property shall be secured during construction with a six (6) foot tall chain link fence and any other security measures in accordance with recommendation of the San Leandro Police Department.

X. POLICE DEPARTMENT REQUIREMENTS

A. All trees planted to be mature enough and located are enough away from the sidewalk so their branches are at least 8 feet above the sidewalk area and 14 feet above the roadway.

B. All building addresses shall be placed in such a position as to be plainly visible and legible from the street. Said numbers shall contrast with their background and be visible at night. Details including number size and location shall be submitted for the review and approval of the City of San Leandro Police Department, Fire Marshal and the Community Development Director, prior to issuance of building permits. Street names shall be approved by the City of San Leandro Police Department, Fire Marshal and the

Community Development Director. Specific property addresses will be assigned by the Building Division of the Community Development Department.

XI. ENVIRONMENTAL SERVICES DIVISION REQUIRMENTS

A. The storage of hazardous materials in quantities equal to or greater than 55 gallons, 200 cubic feet or 500 pounds and generating any amount of hazardous waste requires submittal of a Hazardous Materials Business Plan (HMBP). HMBP submittal shall be completed via the Cal EPA CERS online database. Prior to issuance of a certificate of occupancy or final of a business permit, whichever occurs first, a HMBP shall be submitted to Environmental Services for the storage and use of planned hazardous materials and/or generation of hazardous waste. The plan is subject to the review and approval of Environmental Services; or

B. The storage of hazardous materials in quantities equal to or exceeding permit amounts listed in CA Fire Code Section 105, Tables 105.6.8, 105.6.10 or 105.6.20, but below HMBP quantities above or generating any amount of hazardous waste requires limited registration via the Cal EPA CERS online database. Prior to issuance of a certificate of occupancy or final of a business license, whichever occurs first, Registration shall be submitted to Environmental Services for the storage and use of planned hazardous materials and/or generation of hazardous waste. The registration is subject to the review and approval of Environmental Services.

C. All fees and charges related to Environmental Services programs shall be paid promptly in full. Failure to keep accounts current shall be grounds for revocation of the conditional use permit.

D. Discharge of anything other than rainwater to the stormwater collection system, including area drains, sidewalks, parking areas, parking garages, street curb or gutter, is strictly prohibited.

E. Container Management of Trash, Solid Waste and/or Recyclables shall be required to prevent exposure to or contamination of rainwater, creating illicit discharges or impacting receiving surface waters.

F. New or modified connections to the City's storm water collection system shall be protected from trash loading with Regional Water Quality Control Board (RWQCB) approved full trash capture methods.

G. New connections to the public stormwater collection system shall contain approved full trash capture structural Best Management Practices (BMPs).

H. The elimination of exposure of materials, processes or equipment to the maximum extent practicable is necessary to prevent contamination of rainwater. Exposures that cannot be eliminated require the use of Best Management Practices (BMPs), both engineered and policy/procedural, to prevent remaining exposures from impacting rainwater, creating illicit discharges or contaminating receiving surface waters.

I. The storage of materials, installation of processes and/or equipment outdoors may place the facility into the Industrial/Commercial Facility Stormwater program and require submittal to the Regional Water Quality Control Board a Notice of Intent (NOI) to comply with the State Wide General Industrial Facility Permit. The elimination of exposure to stormwater by relocating indoors, covering or utilizing other engineered controls is highly recommended.

J. The generation or discharge of wastewaters, other than domestic sewerage, may require a pretreatment permit for discharge to the sanitary sewer. If a permit is required, submittal of an application to the City's Environmental Services is required prior to finaling of the building permit or commencing the discharge; whichever shall occur first.

K. A Planned Development subject to installation of structural stormwater treatment BMPs per section C3 of the Municipal Regional Permit shall complete a Stormwater Structural Treatment BMP Operation & Maintenance Data Form. The form shall be submitted to the City's Engineering Division prior to finaling of the grading permit.

L. Changes to ownership, operator, maintenance contractor, Structural Treatment BMPs installed, the O&M Plan, or any other information contained in the Data Form shall be provided to the City by submittal of a revised O&M Data Form 30 days prior to the effective date of the change. Revised Data Forms shall be submitted to the Environmental Services Section.

XII. ALAMEDA COUNTY FIRE DEPARTMENT REQUIREMENTS

A. The project shall comply with the applicable Building and Fire Codes as adopted by the City of San Leandro. Site, building and fire protection system plans shall be provided for review and approval by the Fire Department. Required emergency vehicle access shall be provided on the building permit plans to the satisfaction of the Fire Department.

B. Fire hydrants and fire flow are required for the project per the California Fire Code Appendix B and C. Provide fire flow information for the site. The fire flow information is available from EBMUD.

C. Each office building shall be provided with an automatic sprinkler system. The sprinkler systems are required to be monitored by an approved supervising station.

D. A Knox box is required at the entry to each building. In the event driveway(s) are gated, a Knox key switch is required at the gate in the driveway.

E. Prior to issuance of building permits, project plans shall show that all areas on-site that are required to be marked "No Parking" and painted red, including any turnaround on the site and any required fire lanes.

XIII. GENERAL CONDITIONS

A. Prior to issuance of building permits, a lighting plan and specific street lighting details regarding location, candle power, and light levels (by submittal of a photometric study) shall be reviewed and approved by the City Engineer and Community Development Director.

B. All exterior mechanical equipment such as air conditioning/heating units and radio/television antennas shall be screened from view so as not to be visible from adjacent properties or streets to the satisfaction of the Community Development Director. This condition shall not apply to wireless cable receivers that do not exceed three feet in diameter.

C. The approvals granted by the City as a result of this application, as well as the Conditions of Approval, shall be recorded in the Office of the County Recorder of Alameda County.

Exhibit 4

Development Agreement

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:
City of San Leandro
835 East 14th Street
San Leandro, CA 94577-3767
Attn: Community Development Director

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

APNs: 075-0047-002-00, 075-0047-003-02, 075-0047-007-00, 075-0041-002-01

(Space Above This Line Reserved for Recorder's Use Only)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF SAN LEANDRO

AND

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

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Development Agreement**" or this "**Agreement**") is entered into as of _____, 2014 (the "**Agreement Date**") by and between the City of San Leandro, a California Charter City organized and existing under the laws of the State of California ("**City**") and Chang Income Property Partnership LP, San Leandro Land Series (R1), a Delaware limited partnership ("**Developer**"). City and Developer are referred to individually as "**Party**," and collectively as the "**Parties**."

RECITALS

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

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

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

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

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

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

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

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

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

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

I. City has determined that by entering into this Development Agreement: (1) City will ensure the productive use of property and foster orderly growth and quality development in City; (2) development will proceed in accordance with the goals and policies set forth in the City of San Leandro General Plan (the "**General Plan**") and will implement City's stated General Plan policies; (3) City will receive substantially increased property tax revenues; (4) City will benefit from increased employment and housing opportunities for residents of City that are created by the Project; and (5) the Project will contribute to the revitalization of Downtown San Leandro.

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

K. City has undertaken, pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 *et seq*., hereinafter "**CEQA**"), the required analysis of the environmental effects that would be caused by the Project and has determined those feasible mitigation measures which will eliminate, or reduce to an acceptable level, the adverse environmental impacts of the Project. The environmental effects of the proposed development of the Property were analyzed by the Final Environmental Impact Report (the "**2007 FEIR**") certified by City on September 4, 2007 in connection with the TOD Strategy. City has also adopted a mitigation monitoring and reporting program (the "**MMRP**") to ensure that those mitigation measures incorporated as part of, or imposed on, the Project are enforced and completed. Those mitigation measures for which Developer is responsible are incorporated into, and required by, the Project Approvals.

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

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

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

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

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

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

Q. The terms and conditions of this Development Agreement have undergone extensive review by City staff, the Planning Commission and the City Council at publicly noticed meetings and have been found to be fair, just and reasonable and in conformance with the City General Plan and the Development Agreement Legislation, and, further, the City Council finds that the economic interests of City's residents and the public health, safety and welfare will be best served by entering into this Development Agreement.

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

ARTICLE 1.
GENERAL PROVISIONS

1.1. Parties.

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

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

1.2. Property Subject to this Development Agreement.

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

1.3. Term of the Agreement.

The term ("**Term**") of this Development Agreement will commence upon the Effective Date and continue in full force and effect for a period of ten (10) years, with one automatic extension for another five (5)-year term upon completion of construction of Phase One of the Project (defined in Section 1.4.3 below), unless earlier terminated as provided in this Agreement. The Term has been established by the Parties as a reasonable estimate of the time required to develop the Project and obtain the benefits of the Project.

1.4. The Project

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

installation in Phase 1 or Phase 2 with the approval of the Community Development Director. Any costs in excess of 1% of the construction costs of Phase1 and/or Phase 2 shall be considered a credit against the Public Art fund for subsequent phases.

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

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

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

1.4.10. Landscaping. Each phase of construction includes Developer's construction and maintenance of landscaping in conformity with Article 19, Landscape Requirements, of the San Leandro Zoning Code. City has the right to review and approve the landscaping plan prior to construction.

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

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

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

1.6. Local Hiring . It is in the interests of the City, its residents and local businesses, to encourage development within the City boundaries that strengthens the local economy by providing jobs and increasing economic activity overall. The construction of the Project will directly create construction jobs and indirectly could increase ancillary and complementary jobs that support the Project's construction activities. The City has a strong public interest in encouraging hiring local firms and businesses for major projects within the City.

In order to further these goals, Developer will make a good faith effort to contract with appropriate businesses located in San Leandro for both professionals and construction trades that will be working on the project construction, subject to the following standards:

- For the purpose of this Section 1.6, a business is located in San Leandro if it has a physical presence within the City limits and has applied for and received a local business license; such business may also have offices outside the City;

- Developer will conduct outreach to make City businesses aware of the availability of project related contracts by (a) advertising such opportunities in the local newspaper(s) and (b) holding at least two advertised open houses in the vicinity of the Project to encourage local businesses to come and learn about the project and how they might be engaged to work on the project. Developer shall keep records of these outreach efforts and shall provide them to the City upon request.

- Developer and its contractors and subcontractors will consider in good faith all applications submitted by local businesses in accordance with their normal practice to engage the most qualified business for each position, and make a good faith effort to hire local businesses;

- Developer retains the sole and absolute discretion to engage both professional and construction firms it deems best qualified for the tasks to be performed;

- The requirements of this section shall continue until the issuance of the first temporary certificate of occupancy for each phase of the Project.

- The requirements of this section are limited to the construction activities of the Project.

1.7. Project Approvals.

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

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

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

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

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

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

1.7.6. Subsequent Approvals. In order to develop the Project as contemplated in this Development Agreement, the Project may require land use approvals, entitlements, development permits, and use and/or construction approvals other than those listed in Sections 1.7.1 through 1.7.5 above, which may include, without limitation: development plans, amendments to applicable redevelopment plans, conditional use permits, variances, subdivision approvals, street abandonments, design review approvals, demolition permits, improvement agreements, infrastructure agreements, grading permits, building permits, right-of-way permits, lot line adjustments, site plans, sewer and water connection permits, certificates of occupancy, parcel maps, lot splits, landscaping plans, master sign programs, transportation demand management programs, encroachment permits, and amendments thereto and to the Project Approvals (collectively, "**Subsequent Approvals**"). At such time as any Subsequent Approval applicable to the Property is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Development Agreement applicable to Project Approvals and shall be treated as a "Project Approval" under this Development Agreement.

1.8. Definitions.

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

ARTICLE 2.
DEVELOPMENT OF THE PROPERTY

2.1. Project Development.

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

2.2. Vested Elements.

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

a. The General Plan of City on the Agreement Date, including the General Plan Amendments ("**Applicable General Plan**");

b. The Zoning Ordinance of City on the Agreement Date, including the Zoning Amendment ("**Applicable Zoning Ordinance**");

c. Other rules, regulations, ordinances and policies of City applicable to development of the Property on the Agreement Date, except for any and all fees applicable to the development, which shall be vested as set forth in Section 2.6.3 of this Agreement, (collectively, together with the Applicable General Plan and the Applicable Zoning Ordinance, the "**Applicable Rules**"); and

d. The Project Approvals, as they may be amended from time to time but only after Developer's written consent;

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

2.3. Development Construction Completion.

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

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

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

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

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

2.4.2. Changes in Applicable Rules; Future Rules.

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

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

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

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

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

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

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

2.5. Processing Subsequent Approvals.

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

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

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

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

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

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

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

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

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

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

2.7. Life of Project Approvals and Subdivision Maps

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

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

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

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

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

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

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

ARTICLE 3.
ANNUAL REVIEW

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

3.2. Intentionally omitted.

3.3. Commencement of Process; Developer Compliance Letter.

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

3.4. Community Development Director Review.

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

3.5. Community Development Director Noncompliance Finding.

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

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

3.6. Cure Period.

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

3.7. Referral of Noncompliance to City Council.

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

3.8. Delivery of Documents.

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

3.9. City Council Compliance Finding.

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

3.10. City Council Noncompliance Finding.

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

3.11. Relationship to Default Provisions.

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

ARTICLE 4.
AMENDMENTS

4.1. Amendments to Development Agreement Legislation.

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

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

4.2. Amendments to or Cancellation of Development Agreement.

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

4.3. Operating Memoranda.

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

4.4. Amendments to Project Approvals.

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

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

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

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

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

ARTICLE 5.
DEFAULT, REMEDIES AND TERMINATION

5.1. Events of Default.

Subject to any extensions of time by mutual consent of the Parties in writing, and subject to the provisions of Section 9.2 hereof regarding permitted delays and a Mortgagee's right to cure pursuant to Section 8.3 hereof, any failure by either Party to perform any material term or provision of this Development Agreement (not including any failure by Developer to perform any term or provision of any other Project Approvals) shall constitute an "**Event of Default**," (i) if such defaulting Party does not cure such failure within sixty (60) days (such sixty (60) day period is not in addition to any (60) day cure period under Section 3.7, if Section 3.7 is applicable) following written notice of default from the other Party, where such failure is of a nature that can be cured within such sixty (60) day period, or (ii) if such failure is not of a nature which can be cured within such sixty (60) day period, the defaulting Party does not within such sixty (60) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

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

5.2. Meet and Confer.

During the time periods specified in Section 5.1 for cure of a failure of performance, the Parties shall meet and confer in a timely and responsive manner, to attempt to resolve any matters prior to litigation or other action being taken, including without limitation any action in law or equity; provided, however, nothing herein shall be construed to extend the time period for this meet and confer obligation beyond the 60-day cure period referred to in Section 5.1 (even if the 60-day cure period itself is extended pursuant to Section 5.1(ii)) unless the Parties agree otherwise in writing.

5.3. Remedies and Termination.

If, after notice and expiration of the cure periods and procedures set forth in Sections 5.1 and 5.2, the alleged Event of Default is not cured, the non-defaulting Party, at its option, may institute legal proceedings pursuant to Section 5.4 of this Development Agreement and/or terminate this Development Agreement pursuant to Section 5.6 herein. In the event that this Development Agreement is terminated pursuant to Section 5.6 herein and litigation is instituted that results in a final decision that such termination was improper, then this Development Agreement shall immediately be reinstated as though it had never been terminated.

5.4. Legal Action by Parties.

5.4.1. Remedies. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto or to obtain any remedies consistent with the purpose of this Development Agreement. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy. Without limiting the foregoing, Developer reserves the right to challenge in court any Future Rules that would conflict with the Vested Elements or the Subsequent Approvals for the Project or reduce the development rights provided by the Project Approvals.

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

5.5. Reserved.

5.6. Termination.

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

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

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

ARTICLE 6.
COOPERATION AND IMPLEMENTATION

6.1. Further Actions and Instruments.

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

6.2. Regulation by Other Public Agencies.

Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Development Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Development Agreement in all respects when dealing with any such agency regarding the

Property. To the extent that City, the City Council, the Planning Commission or any other board, agency, committee, department or commission of City constitutes and sits as any other board, agency, commission, committee, or department, it shall not take any action that conflicts with City's obligations under this Agreement unless required to by any State or Federal law.

6.3. Other Governmental Permits and Approvals; Grants.

Developer shall apply in a timely manner in accordance with Developer's construction schedule for the permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. Developer shall comply with all such permits, requirements and approvals. City shall cooperate with Developer in its endeavors to obtain (a) such permits and approvals and (b) any grants for the Project for which Developer applies. The Parties acknowledge that the Project contemplates relocation and improvements of certain pedestrian crossing facilities along the rail lines that border the project site on the Martinez and Alvarado frontages ("**Pedestrian Crossing Improvements**"). Any work in these right of ways will require permits and approvals from various state and regional governmental agencies, including but not limited to BART, Union Pacific Railroad, Caltrans, and the California Public Utilities Commission. City acknowledges and agrees that Developer has no control over the granting of approvals necessary for the Pedestrian Crossing Improvements and that in the event Developer is not granted any required permits or approvals related to the Pedestrian Crossing Improvements, any phase of the Project may proceed to construction as approved in the Project Approvals and contemplated by this Agreement. Completion of the Pedestrian Crossing Improvements shall not be a condition of approval of the Project.

6.4. Cooperation in the Event of Legal Challenge.

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

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

independent defense counsel at its own expense. If, in the exercise of its sole discretion, Developer agrees to pay for defense counsel for City, Developer shall jointly participate in the selection of such counsel. The City shall not settle any third party litigation of Project Approvals without Developer's consent, which consent shall not be unreasonably withheld, conditioned or delayed, subject to Developer's rights under this Agreement.

6.5. Revision to Project.

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

6.6. State, Federal or Case Law.

Where any state, federal or case law allows City to exercise any discretion or take any act with respect to that law, City shall, in an expeditious and timely manner, at the earliest possible time, (a) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement and (b) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

6.7. Defense of Agreement.

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

ARTICLE 7.
TRANSFERS AND ASSIGNMENTS

7.1. Right to Assign.

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

7.2. Release upon Transfer.

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

7.3. Covenants Run with the Land.

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

ARTICLE 8.
MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE

8.1. Mortgagee Protection.

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

8.2. Mortgagee Not Obligated.

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

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

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

8.4. No Supersedure.

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

8.5. Technical Amendments.

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

ARTICLE 9.
MISCELLANEOUS PROVISIONS

9.1. Limitation on Liability.

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

9.2. Force Majeure.

The Term of this Development Agreement and the Project Approvals and the time within which Developer shall be required to perform any act under this Development Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock-outs and other labor difficulties, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, changes in local, state or federal laws or regulations, without limitation of City's obligations under this Agreement, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services prevents, prohibits or delays construction of the Project, enemy action, civil disturbances, wars, terrorist acts, fire, unavoidable casualties, litigation involving this Agreement or the Project Approvals, or any other cause beyond the reasonable control of Developer which substantially interferes with carrying out the development of the Project. Such extension(s) of time shall not constitute an Event of Default and shall occur at the request of any Party. In addition, the Term of this Development Agreement and any subdivision map or any of the other Project Approvals shall not include any period of time during which (i) a development moratorium including, but not limited to, a water, sewer, or other public utility moratorium, is in effect; (ii) the actions of public agencies that regulate land use, development or the provision of services to the Property prevent, prohibit or delay either the construction, funding or development of the Project or (iii) there is any mediation, arbitration; litigation or other administrative or judicial proceeding pending involving the Vested Elements, or Project Approvals. The Term of the Project Approvals shall therefore be extended by the length of any development moratorium or similar action; the amount of time any actions of public agencies prevent, prohibit or delay the construction, funding or development of the Project or prevents, prohibits or delays the

construction, funding or development of the Project; or the amount of time to finally resolve any mediation, arbitration, litigation or other administrative or judicial proceeding involving the Vested Elements, or Project Approvals. Furthermore, in the event the issuance of a building permit for any part of the Project is delayed as a result of Developer's inability to obtain any other required permit or approval, then the Term of this Development Agreement shall be extended by the period of any such delay.

9.3. Notices, Demands and Communications Between the Parties.

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

City:	City of San Leandro 835 E. 14th Street San Leandro, CA 94577 Attn: Community Development Director
with copies to:	City of San Leandro 835 E. 14th Street San Leandro, CA 94577 Attn: City Attorney
Developer:	Chang Income Property Partnership LP, San Leandro Land Series (R1), a Delaware limited partnership Attn: Sunny Tong, Managing Director
with copies to:	Reuben, Junius & Rose, LLP One Bush Street, Suite 600 San Francisco, CA 94104 Attn: Andrew J. Junius

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

transmission shall be deemed received upon receipt of sender of electronic confirmation of delivery, provided that a "hard" copy is delivered as provided above.

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

9.5. Severability.

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

9.6. Section Headings.

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

9.7. Construction of Agreement.

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

9.8. Entire Agreement.

This Development Agreement is executed in ____ (__) duplicate originals, each of which is deemed to be an original. This Development Agreement consists of ____ pages including the Recitals, and three (3) exhibits and one (l) appendix, attached hereto and incorporated by reference herein, which, together with the Project Approvals, constitute the entire understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. The exhibits and appendices are as follows:

Exhibit A	Legal Description of the Property
Exhibit B	Map of the Property
Exhibit C	Walkway Improvements
Exhibit D	Landscaping and Public Outdoor Activity Improvements
Exhibit E	Impact Fees
Appendix I	Definitions

9.9. Estoppel Certificates.

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

9.10. Recordation.

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

9.11. No Waiver.

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

9.12. Time Is of the Essence.

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

9.13. Applicable Law.

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

9.14. Attorneys' Fees.

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

9.15. Third Party Beneficiaries.

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

9.16. Constructive Notice and Acceptance.

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

9.17. Counterparts.

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

9.18. Authority.

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

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

DEVELOPER:

Chang Income Property Partnership LP, San Leandro Land Series (R1), a Delaware limited partnership
By: _____
Name: _____
Title: _____

CITY:

CITY OF SAN LEANDRO
a California Charter City

By: _____
Name: Chris Zapata
Title: City Manager

ATTESTATION:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Richard Pio Roda
City Attorney

STATE OF CALIFORNIA)
) ss:
COUNTY OF ALAMEDA)

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

[Seal]

STATE OF CALIFORNIA)
) ss:
COUNTY OF ALAMEDA)

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

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

WITNESS my hand and official seal.

_____
Signature of Notary Public

[Seal]

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[Attached]

EXHIBIT B

MAP OF PROPERTY

[Attached]

EXHIBIT C

WALKWAY IMPROVEMENTS

[Attached]

EXHIBIT D

LANDSCAPING AND PUBLIC OUTDOOR ACTIVITY IMPROVEMENTS

[Attached]

EXHIBIT E
IMPACT FEES

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

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

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

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

Table A

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

Table B

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

APPENDIX I

DEFINITIONS

AB 1600 — Section 2.6.3(b)

Administrative Amendment — Section 4.4.2

Agreement — Preamble

Agreement Date — Preamble

Applicable General Plan — Section 2.2(a)

Applicable Rules — Section 2.2(c)

Applicable Zoning Ordinance — Section 2.2(b)

Approving Ordinance – Recital O

CEQA — Recital K

City — Preamble, Section 1.1.1

City Council — Recital O

Developer — Preamble, Section 1.1.2

Development Agreement — Preamble

Development Agreement Legislation — Recital B

Effective Date — Recital O

Event of Default — Section 5.1

FEIR — Recital K

Future Rules — Section 2.4.2(a)

General Plan — Recital I

Impact Fees — Section 2.6.3

Martinez Improvements — Section 1.4.2

MMRP — Recital K

MND — Section 1.7.2

Mortgage — Section 8.1

Mortgagee — Section 8.1

Notice of Default — Section 3.5

Parties — Preamble

Party — Preamble

Phase One Improvements – Section 1.4.3

Phase Two Improvements – Section 1.4.4

Phase Three Improvements – Section 1.4.5

Planned Development Permit — Section 1.7.4

Planning Commission — Recital N

Processing Fees — Section 2.6.2

Project — Recital F and Section 1.4

Project Approvals — Section 1.7

Property — Recital C

Public Art Fund – Section 1.4.9

Public Improvements – Section 1.4.8

State or Federal Law — Section 2.4.3

Subsequent Approvals — Section 1.7.6

Term — Section 1.3

TOD Strategy – Recital D

Transfer — Section 7.1

Vested Elements — Section 2.2

Zoning Amendment — Section 1.7.3