EXCLUSIVE NEGOTIATING AGREEMENT
(Parcel Group 5)

This Exclusive Negotiating Agreement (this "Agreement") is entered into as of _____, 2019 (the "Effective Date"), by the City of Hayward, a California charter city (the "City"), and _____("Developer"), on the basis of the following facts. The City and Developer may sometimes be referred to individually as "Party" and collectively as "Parties."

RECITALS

A. The City is the owner of certain real property in the City of Hayward, California more particularly described in the attached Exhibit A, consisting of approximately 37.46 +/- acres of real property located between Harder Road on the south, Carlos Bee Boulevard on the north, California State University East Bay on the east and Central Boulevard on the west (the "Site" or "Property").

B. The City acquired the right to purchase property for economic development purposes. The City's goals for the site include: development consistent with adopted plans and policies of the City and; high quality architecture and site design providing a distinctive community character; consistency with the context and character of the adjacent uses; development consistent with the City's revitalization goals; open space; and enhancement of pedestrian activity and connectivity.

C. The purpose of this Agreement is to establish procedures and standards for the negotiation by the City and the Developer of a disposition and development agreement (the "DDA") between the City and the Developer to govern the redevelopment of the Site (the "Project").

AGREEMENT

The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

ARTICLE 1.
EXCLUSIVE NEGOTIATIONS RIGHT

Section 1.1 Good Faith Negotiations.

(a) The City and the Developer agree, for the Negotiating Period described in Section 1.2, to work cooperatively and in good faith to make a preliminary feasibility

determination and, if the Project or any portion thereof is determined to be feasible and desirable by both Parties, to negotiate diligently and in good faith the terms of a DDA for the construction of the Project on the Site. During the Negotiating Period, the Parties shall use good faith efforts to accomplish the respective tasks outlined in Article 2 to facilitate the negotiation of a mutually satisfactory DDA.

(b) Among the issues to be addressed in the negotiations are: (1) the physical and land title conditions of the Site and remediation of any adverse conditions by the Developer; (2) the land uses to be included in the Project, or portions thereof, (3) the type of land use entitlements necessary for the Project, including environmental review; (4) the Project development schedule, and phasing plan if applicable; (5) financing and feasibility of the Project; (6) the marketing and management of the Project; (7) the sale price and conditions of sale for the Property; (8) the retention and dedication of open space, park and trail facilities; (11) the creation and participation in a lighting and landscaping assessment district or other property based assessment on property sold to the Developer for maintenance of open space/park/trail areas in the Project and areas retained by City; and (12) other matters that may be identified by either Party.

(c) The City and Developer agree that the negotiations under this Agreement and the DDA will be based on the proposal received from the Developer on _____, which is attached hereto as Exhibit E and incorporated herein by this reference (the "Proposal"). Preliminary commitments in the Proposal have been incorporated into this Agreement and the parties expect the negotiations of the DDA may incorporate additional commitments from the Proposal.

Section 1.2 Negotiating Period.

(a) The negotiating period (the "Negotiating Period") under this Agreement shall be nine (9) months, commencing on the Effective Date of this Agreement, subject to extension as set forth below and/or by mutual agreement of the Parties in writing (subject to the last sentence of this Section 1.2(a)). The Developer may extend the Negotiating Period twice, subject to the reasonable approval of the City Manager, each extension shall be for a period of three (3) months. The Developer shall deliver thirty (30) days prior written notice of the Developer's intent to exercise the extension ("Extension Notice"). Concurrently with the delivery of an Extension Notice, the Developer shall deliver to Escrow a non-refundable extension payment of Ten Thousand Dollars ($10,000) (each, an "Extension Payment"). Each Extension Payment shall be entirely non-refundable upon delivery into Escrow, but in the event the Developer and City enter into a DDA and the Developer acquires the Property from the City, the Extension Payments shall be credited against any cash purchase price paid by the Developer to the City. The Negotiating Period may be extended or modified beyond the extensions described in the preceding sentence only by formal action of the City Council.

(b) If a DDA has not been executed by the City and the Developer by the expiration of the Negotiating Period (as the Negotiating Period may be extended pursuant to the preceding paragraph), then this Agreement shall terminate and neither Party shall have any further rights or obligations under this Agreement, except that any provision of this Agreement

that is specified to survive termination shall remain in effect, and the Escrow agent shall release to the City any Extension Payments being held in Escrow. If a DDA is executed by the City and the Developer, then, upon execution of the DDA, this Agreement shall terminate, and all rights and obligations of the Parties shall be as set forth in the executed DDA. After execution of a DDA, any Extension Payments made by the Developer shall be disbursed at the closing under the DDA, pursuant to the terms thereof.

Section 1.3 Exclusive Negotiations.

(a) During the Negotiating Period (as the Negotiating Period may be extended pursuant to Section 1.2), the City shall not negotiate with any entity other than the Developer regarding the acquisition or development of Parcel Group 5 or solicit or entertain bids or proposals to do so. Notwithstanding anything to the contrary herein, nothing in this Agreement shall preclude the City from allowing any temporary uses of Parcel Group 5 that the City deems appropriate, at its sole and absolute discretion; provided the City will make best efforts to avoid allowing any temporary use that may result in the contamination or damage to the property that may materially or adversely affect the Developer's intended development thereof, and Developer shall have no liability or responsibility for any contamination or damage resulting from a temporary use.

Section 1.4 Opening Escrow and Consideration.

(a) The Developer shall open escrow with North American Title Company's Pleasanton Office, Attn: Evelyn Bowens-Chambers ("Escrow").

(b) In consideration for this Agreement and the Developer's exclusive right to negotiate under this Agreement, the Developer will concurrently with the execution of this Agreement deposit with the City, Ten Thousand Dollars ($10,000) ("Good Faith Deposit"). In the event the Developer and City enter into a DDA and the Developer acquires the Property, or any portion thereof, from the City, the Good Faith Deposit payment shall be credited against any cash purchase price paid by the Developer to the City.

(c) Failure by the Developer to pay the Good Faith Deposit within five (5) business days of the due date shall constitute a default by Developer. The Good Faith Deposit is provided in consideration for this Agreement and is non-refundable except pursuant to the terms of Section 2.7 and 3.8(b) below.

Section 1.5 Reimbursement Deposit.

(a) By the time set forth in the Schedule of Performance (as defined in Section 2.6 below), as additional consideration for this Agreement, the Developer agrees to execute a "Reimbursement Agreement" substantially in the form attached hereto as Exhibit D, under which the Developer will be required to reimburse the City for costs incurred by the City that are related to this Agreement, including actual costs for outside consultants, title reports, legal costs, City staff costs, and other costs related to the negotiation and approval of the DDA and ancillary documents (collectively, "City Costs"). The Developer shall, concurrently with the execution of this Agreement by the City, provide to the City a cash deposit of Forty Thousand

Dollars ($40,000) (the "Reimbursement Deposit") (which the City will hold in a standard impound account) to reimburse City for City Costs. If at any time the remaining unencumbered balance of the Reimbursement Deposit is less than Fifteen Thousand Dollars ($15,000), the City shall request in writing that the Developer replenish the Reimbursement Deposit amount to bring the unencumbered balance to at least Twenty Five Thousand Dollars ($25,000). At the time the City delivers a request for replenishment to the Developer, the City shall also provide to the Developer an accounting of the reimbursements to be made out of the Reimbursement Deposit through the date of the City's request to replenish the Reimbursement Deposit in accordance with the terms of the Reimbursement Agreement. The execution of the Reimbursement Agreement required under this Section 1.5(a) shall be a condition precedent to the extension of the Negotiating Period. The Developer agrees and acknowledges that deposits made under this Agreement are separate from the deposit that will be required by the City Planning Division to process entitlements when an application for project approval are submitted.

(b) Failure by the Developer to pay the Reimbursement Deposit within five (5) business days of the due date, or to replenish the Reimbursement Deposit within fifteen (15) days of a replenishment request, shall constitute a default by Developer. If this Agreement is terminated for any reason prior to the approval by the Parties of a DDA, the City, after payment of all outstanding costs and invoices, shall return to the Developer any unexpended amounts of the Reimbursement Deposit.

Section 1.6 Identification of Developer's Representatives.

The Developer's authorized and designated representative to negotiate the DDA with the City include: _____. The Developer shall notify the City in writing of any changes to the designated representative. The Developer shall make full disclosure to the City of all information pertinent to the ownership, control, and financial capacity of the development entity that is proposed to serve as developer under the DDA, including, but not limited to, the members of the Developer's development team.

Section 1.7 Actions by the City.

(a) Whenever this Agreement calls for or permits the approval, consent, authorization or waiver of the City, the approval, consent, authorization, or waiver of the City Manager shall constitute the approval, consent, authorization or waiver of the City without further action of the City Council. The Developer acknowledges that nothing in this Agreement (including any approval by the City Manager in accordance with this Agreement), or a DDA (if approved by the City Council) shall limit, waive, or otherwise impair the authority and discretion of: (1) the City's Planning Department, in connection with the review and approval of the proposed construction plans for the Project, or any use, or proposed use, of the Site; (2) the City's issuance of a building permit; or (3) any other office or department of the City acting in its capacity as a governmental entity, regulatory authority and/or police power.

(b) The City Manager is the City's representative for all purposes under this Agreement. The City Manager or designee is authorized to confer any consents or approvals

required by City under this Agreement, except where this Agreement specifies that approval by the City Council is required.

ARTICLE 2.
NEGOTIATION TASKS

Section 2.1 Overview.

To facilitate negotiation of the DDA, the Parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 2 in a timeframe that will support negotiation and execution of a mutually acceptable DDA prior to the expiration of the Negotiating Period.

Section 2.2 Financing and Costs of Project.

(a) Within the Negotiating Period (excluding extensions thereto), the Developer shall provide the City, for its review and approval, with a preliminary detailed financial analysis for the Project containing, among other matters, a development budget and operating proforma (the "Financing Proposal"). The Financing Proposal shall identify the sources of funding for each phase, or component, of the Project, including but not limited to all proposed sources of debt and equity to be utilized for the Project. The financial analysis shall be refined by the Parties during the Negotiating Period, as appropriate, and will be used to evaluate the financial feasibility of the Project and to assist in the negotiations of terms regarding payment of costs of land and development.

Section 2.3 Master Plan.

(a) Within the initial Negotiating Period (excluding extensions thereto), the Developer shall prepare, consistent with the approved Master Development Plan, conceptual site plans including schematic design of the various components of the Project and a preliminary analysis of land use entitlements required for the entire Project, for the City's review and approval (the "Master Plan").

Section 2.4 Planning Approvals.

The Developer acknowledges that the Project requires discretionary approvals and entitlements from the City (the "Planning Approvals"). During the Negotiating Period (excluding extensions thereto), the City and the Developer will agree on the type of Planning Approvals necessary for development of the Project, which may include a site plan review, zoning amendment, a tentative map, and a final map. The Developer shall be responsible for the payment of all application fees associated with the Planning Approvals.

Section 2.5 Environmental Review.

It is the intent of the City and the Developer that any required environmental review for the Planning Approvals and DDA shall be prepared in a coordinated manner so that the Planning Approvals and DDA may be reviewed concurrently. During the Negotiating Period, the Developer shall work with the City, as lead agency, to prepare or cause to be prepared any

appropriate environmental documentation required by the California Environmental Quality Act ("CEQA") in connection with the Planning Approvals; provided, that nothing in this Agreement shall be construed to compel the City to approve or make any particular findings with respect to any CEQA documentation. The Developer shall provide such information about the Project as may be required to prepare or cause preparation and consideration of any CEQA required document, and shall otherwise generally cooperate to complete this task. Nothing in this Agreement shall be construed to compel the City to approve or make any particular findings with respect to such CEQA documentation. The Developer shall be responsible for all costs associated with the preparation of the required CEQA documentation for the Project. The Developer shall be responsible for the payment of all usual City fees and costs associated with the environmental review of the Planning Approvals and DDA.

Section 2.6 Schedule of Performance.

(a) Within fourteen (14) days after the Effective Date, the Developer shall provide the City, for its review and approval, a proposed detailed schedule of performance for the Project (the "Schedule of Performance") which shall include, but not be limited to the dates for obtaining land use entitlements and financing commitments for the Project, the date for the submittal of construction plans to the City, the date for close of escrow on the Site, and the dates for the commencement and completion of construction of the Project. The Schedule of Performance shall be appended hereto as Exhibit B, incorporated herein by this reference.

Section 2.7 Due Diligence. During the Negotiating Period, the Developer shall conduct due diligence activities it deems necessary to provide Developer with sufficient information to determine the feasibility of the Project on the Site, including but not limited to planning requirements, soils reports, noise study, hazardous materials report, financial feasibility study, infrastructure, and title adequacy.

(a) Physical Adequacy Determination. The Developer shall have sixty (60) days after the Effective Date of this Agreement (the "Due Diligence Period") to determine whether the Site is suitable for the Project, taking into account the geotechnical and soils conditions, the presence or absence of toxic or other hazardous materials, the massing of the proposed development improvements, infrastructure, the planning requirements imposed on projects of this type, and the other environmental and regulatory factors that the Developer deems relevant. If, in the Developer' judgment based on such investigations and analyses, any portion is not suitable for development, the Developer shall notify the City in writing prior to the expiration of the initial Negotiating Period of its determination (an "Unsuitability Notice"). Upon delivery of an Unsuitability Notice by the Developer, this Agreement shall be terminated without further action of any Party, and thereafter no Party shall have any further duties, obligations, rights, or liabilities under this Agreement, except as set forth in Section 2.8, Section 3.6, and Section 3.8 and return of the Initial Deposit and any unspent Reimbursement Deposit. If the Developer does not deliver an Unsuitability Notice during the initial Negotiating Period, then the Site shall be deemed physically suitable for development of the Project and any executed DDA shall not provide for an additional opportunity for the Developer to determine the physical suitability of the Site or for the Developer to terminate the DDA as a result of purported physical unsuitability. Any DDA shall provide that the Site is to be conveyed to the Developer in its "as-

is" condition as of the date Developer is deemed to have waived its rights to send an Unsuitability Notice under this Agreement.

(b) Right of Entry. The City shall afford authorized representatives of the Developer access to the Site for the physical adequacy determination as provided in that certain Permit to Enter Agreement by and between the Parties, substantially in the form attached hereto as Exhibit C, incorporated herein by this reference.

(c) Title Adequacy Determination. Developer shall cause North American Title in Pleasanton, California to issue a preliminary title report (the "Report") for the Site to the Developer and the City. If the Developer objects to any exception appearing on the Report or should any title exception arise after the date of the Report, the Developer may object to such exception, provided such objection is made to the City in writing on or before 5 P.M. on the thirtieth (30th) day following the date the Effective Date. If the Developer objects to any exception to title, the City, within fifteen (15) days of receipt of Developer's objection shall notify Developer in writing whether City elects to: (1) cause the exception to be removed of record; (2) obtain a commitment from the title company for an appropriate endorsement to the policy of title insurance to be issued to the Developer, insuring against the objectionable exception; or (3) terminate this Agreement unless the Developer elects to take title subject to such exception. If any Party elects to terminate this Agreement pursuant to this Section, no Party shall thereafter have any obligations to or rights against the others hereunder, except as set forth in Sections 2.8, Section 3.6 and Section 3.8. If the Developer fails to provide any notification to the City regarding this matter prior to expiration of the time period set forth herein, the condition set forth in this Section shall be deemed satisfied. Any executed DDA shall not provide for an additional opportunity for the Developer to determine title to the Site or for the Developer to terminate the DDA as a result of title to the Site and that the fee title to the Site is to be conveyed to the Developer subject only to those exceptions Developer has agreed to accept pursuant to this Section 2.7(c).

(d) Utilities. During the Negotiating Period, the Developer shall consult with the utility companies to determine preliminarily if existing utility facilities require expansion, relocation or undergrounding in connection with the Project.

Section 2.8 Preliminary Plan. Within the time set forth in the Schedule of performance, the Developer shall submit to the City a proposed conceptual development program (the “Preliminary Plan”) for the Site, consistent with the approved Master Development Plan, that includes: (a) a detailed description of the proposed use of the Site, including the square footage for each type of use; (b) a proposed development phasing schedule; (c) proposed housing affordability and the nature of affordability controls, consistent with Community Redevelopment Law; (d) a preliminary financing plan, containing an estimated development budget and operating pro forma; and (e) a preliminary site plan. The Preliminary site plan shall show the general location of the proposed buildings, landscaping and site improvements; the massing of any proposed buildings; roadways, parking and points of ingress and egress; and any other proposed improvements to be constructed as part of the Project.

Section 2.9 City Discretion.

(a) Nothing in this Agreement shall obligate the City to exercise its discretion regarding the Project in any particular manner. Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any Planning Approvals or DDA or any required permits, applications, or maps, and in no way limits the discretion of the City in the permit and approval process. Developer acknowledges that approval, conditional approval, or disapproval of the Planning Approvals and DDA following completion of the environmental review process is within the sole and exclusive discretion of the City without limitation by or consideration of the terms of this Agreement; that the City may not make any commitment to any particular development before it completes environmental review; that the City may not commit to planning and zoning approvals by contract; and that the City makes no representation regarding the ability or willingness of the City to approve the Planning Approvals or DDA, nor any representation regarding the imposition of any mitigation measures or other conditions of approval. In addition, the Developer acknowledges that other local, state or federal agencies may require additional entitlements, including environmental review, and that any approval by the City does not bind any other local, state or federal agency.

(b) The Parties recognize that the City has the sole discretion and right to terminate this Agreement without fault or default if City determines not to approve the Planning Approvals or DDA for the Project. Upon termination for this reason, neither Party shall have any further rights or obligations under this Agreement, except that any provisions of this Agreement that are specified to survive termination shall remain in effect and binding upon the Parties.

Section 2.10 Reports.

(a) Promptly following execution of this Agreement with respect to Documents then in its possession or under its reasonable control, the City shall provide the Developer with copies of all existing leases, and all non-confidential or nonproprietary reports, studies, analyses, official correspondence and similar documents (collectively, "Documents"), prepared or commissioned by the City with respect to this Agreement and the Project.

(b) Unless otherwise waived by the City, the Developer shall provide the City with copies of final versions of all reports, studies, analyses, official correspondence and similar documents, but excluding confidential or proprietary information, or any information protected by the attorney-client privilege or that is attorney work product, prepared or commissioned by the Developer with respect to this Agreement and the Project, promptly upon their completion.

(c) While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, the Developer acknowledges that the City will need sufficient, detailed information about the proposed Project (including, without limitation the financial information described in Section 2.2) to make informed decisions about the content and approval of the DDA. The City will work with the Developer to maintain the confidentiality of proprietary information, or any information protected by the attorney client privilege or the attorney work product doctrine, subject to the requirements imposed on the City by the Public Records Act (Government Code Section 6253 et seq.). The Developer acknowledges that the City may share information provided by the Developer of a financial and potential proprietary

nature with third party consultants and City council members as part of the negotiation and decision making process. If this Agreement is terminated without the execution of a DDA, the City shall return to the Developer any proprietary information submitted by the Developer under this Agreement.

Section 2.11 Organizational Documents.

Concurrent with execution of this Agreement, the Developer shall provide the City with copies of its organizational documents evidencing that the Developer exists and is in good standing and authorized to conduct business in California, and to perform its obligations under the DDA.

Section 2.12 City Economic Development Findings.

The City shall prepare any necessary documentation pursuant to Government Code Section 52201 (the "Section 52201 Report") to be submitted to the City Council of the City in conjunction with the City's consideration of any DDA that results from negotiations pursuant to this Agreement. The Section 52201 Report shall contain the estimated value of the Site determined at its highest and best use under the zoning and other regulations governing the Site, the estimated value of the Site determined by the Project use and development costs required pursuant to the proposed DDA, and any other information required by applicable law.

Section 2.13 Progress Reports.

From time to time as reasonably agreed upon by the Parties, each Party shall make oral or written progress reports advising the other Party on studies being made and matters being evaluated by the reporting Party with respect to this Agreement and the Development.

Section 2.14 Compliance with Relocation Requirements.

Seller hereby represents that there are no tenants on the Property. To the extent required by any federal or state relocation law (including, but not limited to, California Government Code 7260 et seq), the Developer shall comply with all applicable requirements of such laws, including, but not limited to, delivering any applicable notices to the existing occupants of the Site, and the preparation of any relocation plan regarding the relocation of any existing occupants.

Section 2.15 Community Outreach.

At the appropriate time or times during the Negotiating Period, the Developer shall affirmatively outreach to the local community to obtain and consider community input regarding the design and use of the Project. Included in the Schedule of Performance required to be submitted pursuant to Section 2.6 above, the Developer shall submit to the City a proposed community outreach plan and schedule. The Developer shall hold community meetings consistent with the plan approved by City pursuant to this Section on the dates specified in the Schedule of Performance approved by the City pursuant to Section 2.6.

ARTICLE 3.
GENERAL PROVISIONS

Section 3.1 Limitation on Effect of Agreement.

This Agreement shall not obligate the City or the Developer to enter into a DDA or any other Agreement regarding the Site. By execution of this Agreement, the City is not committing itself to or agreeing to undertake disposition of the Site. Execution of this Agreement by the City is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent City Council action the final discretion and approval regarding the execution of a DDA and all proceedings and decisions in connection therewith. Any DDA resulting from negotiations pursuant to this Agreement shall become effective only if and after such DDA has been considered and approved by the City Council, following conduct of all legally required procedures, and executed by duly authorized representatives of the City and the Developer. Until and unless a DDA is signed by the Developer, approved by the City Council, and executed by the City, no agreement drafts, actions, deliverables, or communications arising from the performance of this Agreement shall impose any legally binding obligation on either Party to enter into or support entering into a DDA or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding document.

Section 3.2 Notices.

Formal notices, demands and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, (a) dispatched by certified mail, postage prepaid, return receipt requested, or (b) sent by express delivery or overnight courier service, or (c) sent via email to the email address set forth below, with a copy of such notice concurrently sent by either of the methods set forth in the preceding clauses (a) or (b), to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

City: City of Hayward
777 "B" Street
Hayward, CA 94541-5007
Attn: City Manager
Facsimile: 510-583-3601
Email: Kelly.McAdoo@hayward-ca.gov

With copies to:

City of Hayward
777 "B" Street
Hayward, CA 94541-5007
Attn: City Attorney
Facsimile: (510) 583-3660
Email: Michael.Lawson@hayward-ca.gov

Goldfarb & Lipman
1300 Clay Street, 11th Floor
Oakland, CA 94612
Attn: Heather Gould
Facsimile: (510) 836-1035

Developer:

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 3.3 Waiver of Lis Pendens.

It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Site with respect to this Agreement or any dispute or act arising from it.

Section 3.4 Costs and Expenses.

Each Party shall be responsible for its owns costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement and the performance of each Party's obligations under this Agreement, except as otherwise agreed in writing by the Parties.

Section 3.5 No Commissions.

The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any DDA resulting from this Agreement. The City represents that it has engaged no broker, agent, or finder in connection with this transaction, and the Developer shall defend and hold the City harmless from any claims by any broker, agent, or finder retained by the Developer.

Section 3.6 Indemnity.

Developer shall indemnify, protect, defend and hold harmless the City, and its council members, officials, officers, employees, representatives, members, and agents (collectively, "Indemnified Parties") from and against any and all challenges to this Agreement, and any and all losses, liabilities, damages, claims or costs (including attorneys' fees) arising from the

negligent acts, errors, or omissions and willful misconduct with respect to the Site or the obligations of the Developer, its officers, employees, representatives, member and agents hereunder, excluding any such losses arising from the active negligence or willful misconduct of the City or any of the Indemnified Parties. This indemnity obligation in connection with events occurring as a result of implementation of this Agreement shall survive the termination of this Agreement.

Section 3.7 Nonliability of Agency Officials and Employees.

No council members, officials, employees, representative, member agents or contractors of the City shall be personally liable to the Developer in the event of any default or breach by City or for any amount, which may become due to Developer or on any obligations under the terms of the Agreement.

Section 3.8 Defaults and Remedies

(a) Default. Failure by either Party to negotiate in good faith as provided in this Agreement or to perform a material obligation under this Agreement shall constitute an event of default hereunder. The non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the required action to cure the default. If a default remains uncured fifteen (15) days after receipt by the defaulting Party of such notice, the non-defaulting Party may exercise the remedies set forth in subsection (b).

(b) Remedies.

(1) In the event of an uncured default by a Party, the non-defaulting Party's sole remedy shall be to terminate this Agreement. Following such termination, neither Party shall have any further right, remedy or obligation under this Agreement, except that the following obligations shall survive such termination: (A) Developer's indemnification obligations pursuant to Sections 3.6 and pursuant to the Right of Entry; (B) the City's obligation to refund any unexpended amounts of the Reimbursement Deposit as provided in Section 1.5(b); and (C) to refund the Initial Deposit as provided in Section 1.4(c).

(2) In no event shall either Party be entitled to damages of any kind in the event of termination of this Agreement. Except as expressly provided in subparagraph (b)(1) of this Section 3.8, neither Party shall have any liability to the other Party for damages arising out of or related to performance under this Agreement or otherwise for any default, nor shall either Party have any other claims with respect to performance or default under this Agreement. Each Party specifically waives and releases any such rights or claims it may otherwise have at law or in equity.

Section 3.9 Discrimination.

Developer shall not discriminate against any person related to the performance under this Agreement because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, or sex.

Section 3.10 Business License.

Developer shall apply for and pay the business tax and registration tax for a business license, in accordance with the City Code.

Section 3.11 Venue.

Alameda County shall be the site and have jurisdiction for the resolution of all actions.

Section 3.12 Governing Law.

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

Section 3.13 Entire Agreement.

This Agreement constitutes the entire agreement of the Parties regarding the subject matters of this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, or written, are merged in this Agreement and shall be of no further force or effect. Notwithstanding anything to the contrary, the Right of Entry Agreement, executed by the parties pursuant to Section 2.7(b) shall continue in full force and effect.

Section 3.14 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The part and paragraph headings used in this Agreement are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

Section 3.15 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 3.16 Assignment.

The Developer may not transfer or assign any or all of its rights or obligations hereunder to any other entity except with the prior written consent of the City, which consent shall be granted or withheld in the City's sole discretion, and any such attempted transfer or assignment without the prior written consent of City shall be void. The City agrees to consent to Developer's assignment of this Agreement to an affiliate of Developer provided that (a) such affiliate is controlled by Developer and Developer owns at least a majority of the affiliated entity, (b) Developer shall not be released from any liability or obligation under his Agreement, and (c) Developer shall remain the lead negotiator with the City with respect to the DDA and Project. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent

assignment. The City may at its reasonable discretion approve more than one assignment for each portion of Project.

Section 3.17 No Third-Party Beneficiaries.

This Agreement is made and entered into solely for the benefit of the City and the Developer and no other person shall have any right of action under or by reason of this Agreement.

Section 3.18 Developer Not an Agent.

Nothing in this Agreement shall be deemed to appoint Developer as an agent for or representative of the City, and Developer is not authorized to act on behalf of the City with respect to any matters except those specifically set forth in this Agreement. The City shall not have any liability or duty to any person, firm, corporation, or governmental body for any act of omission or commission, liability, or obligation of Developer, whether arising from actions under this Agreement or otherwise.

Section 3.19 Severability.

In the event any section or portion of this Agreement shall be held, found, or determined to be unenforceable or invalid for any reason whatsoever, the remaining provisions shall remain in effect, and the Parties shall take further actions as may be reasonably necessary and available to them to effectuate the intent of the Parties as to all provisions set forth in this Agreement.

Section 3.20 Time Is of the Essence.

Time is of the essence for each of the Parties' obligations under this Agreement.

Section 3.21 Confidentiality.

Developer acknowledges and agrees that the City is a public entity with a responsibility and, in many cases, legal obligation to conduct its business in a manner open and available to the public. Accordingly, any information provided by the Developer to the City with respect to the Site, the Project or Developer may be disclosed to the public either purposely, inadvertently, or as a result of a public demand or order. With respect to any information provided that the Developer reasonably deems and identifies in writing as proprietary and confidential in nature, the City agrees to exercise their best efforts to keep such information confidential to the extent allowed by law.

Signatures to Follow on Next Page

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the date first above written.

DEVELOPER:

By: _____

Its: _____

Signatures continue on the following page

CITY OF HAYWARD, a California charter city

By: _____
Kelly McAdoo, City Manager

APPROVED AS TO FORM:

By: _____
Michael S. Lawson, City Attorney
Joseph Brick, Assistant City Attorney

ATTEST:

By: _____
Miriam Lens, City Clerk

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

EXHIBIT B

FORM OF SCHEDULE OF PERFORMANCE

EXHIBIT C

COPY OF PERMIT TO ENTER AGREEMENT

EXHIBIT D

FORM OF REIMBURSEMENT AGREEMENT

EXHIBIT E

DEVELOPER PROPOSAL