



DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE CITY OF DEL REY OAKS

and

MONTEREY PENINSULA PROPERTIES, LLC

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is made as of July 10, 2014, by and among the City of Del Rey Oaks, a municipal corporation (the "City"), and Monterey Peninsula Properties, LLC, a California limited liability company, (the "Developer"), with reference to the following facts, purposes, and understandings.

RECITALS

- A. Capitalized terms used herein are defined in Article 1 of this Agreement.
- B. The City wishes to accomplish the redevelopment of that certain real property consisting of approximately 73 acres, specifically Parcels A, D and Cal Trans Right-of-way, located on former Fort Ord Army base lands within the city limits of the City of Del Rey Oaks, and within the Del Rey Oaks Redevelopment Project Area more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Site");
- C. The Fort Ord Reuse Authority ("FORA") is an independent public corporation of the State of California with jurisdiction over the territory of the former Fort Ord, created pursuant to Title 7.85 (commencing with Section 67650) of the California Government Code for the purpose of facilitating the over-all redevelopment of the former Fort Ord in accordance with the Fort Ord Base Reuse Plan ("FORA Base Reuse Plan");
- D. The City acquired fee title to approximately 327.75 acres of property at the former Fort Ord (the "Property"), including the Site, from the former Del Rey Oaks Redevelopment Agency pursuant to the Agency Deed. The Former Redevelopment Agency acquired title to the Property from FORA on March 3, 2006. The City and FORA entered into that certain Implementation Agreement dated May 1, 2001 whereby FORA agreed to transfer certain property to the City and the City agreed to use and dispose of such property in accordance with the requirements of the FORA Base Reuse Plan and the FORA Act. The City has received approval from the California Department of Finance on a Long Range Property Management Plan that allows the City to retain the Property for future development consistent with the Fort Ord Reuse Plan.
- E. The Developer and the City intend to enter into an Option Agreement whereby the City will grant to the Developer an option to acquire the remaining portions of the Property, along with certain rights to potable and non-potable water, as set forth therein. The Developer intends to develop the Property in a manner consistent with the FORA Reuse Plan.
- F. This Agreement sets forth the conditions upon which the City will convey the Site to the Developer, along with certain rights to potable and non-potable water as set forth below, and the process the parties will follow with regards to the development of the Site as well as the remainder of the Property, should the Developer elect to acquire the remainder of the Property pursuant to the terms of the Option Agreement.

G. The development of the Site pursuant to this Agreement is in the vital and best interests of the City and the health, safety, morals and welfare of its residents, and is in accord with the public purposes and provisions of applicable state and local laws. Development of the Site will substantially improve the economic and physical conditions of the Site and the surrounding area in accordance with the FORA Base Reuse Plan, the Redevelopment Plan and the City's General Plan.

NOW, THEREFORE, the City and the Developer agree as follows:

ARTICLE 1.
DEFINITIONS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized words shall have the following meanings:

- (a) "Agency" shall mean the former Del Rey Oaks Redevelopment Agency, a public body corporate and politic.
- (b) "Agreement" shall mean this Disposition and Development Agreement.
- (c) "Building Permit" shall mean an excavation, foundation or other building permit issued by the City in connection with the construction of the Improvements.
- (d) "CEQA" shall mean the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.), and its implementing guidelines.
- (e) "City" shall mean the City of Del Rey Oaks, California, a municipal corporation, operating through its governing body, the City Council, and its various departments.
- (f) "City Event of Default" shall mean any default by the City as set forth in Section 7.2 below.
- (g) "Close of Escrow" shall have the meaning set forth in Section 2.1.
- (h) "Developer" shall mean Monterey Peninsula Properties, LLC, a California limited liability company.
- (i) "Developer Event of Default" shall mean any default by the Developer as set forth in Section 7.3, subject to any applicable notice and cure rights set forth therein.
- (j) "Development" shall mean the Improvements as well as the improvements proposed to be developed by the Developer on the remainder of the Property.
- (k) "Effective Date" shall mean the date which is the latest of (i) the date this Agreement is executed by the Developer, (ii) the date this Agreement is approved by the City Council and executed by the City.
- (l) "Escrow" shall mean the escrow opened with the Escrow Holder to close

the transactions described in Article 2 below.

(m) "Escrow Holder" shall mean Chicago Title, California, or any other escrow holder selected by both Parties to administer the escrow.

(n) "FORA Base Reuse Plan" shall mean and refer to the Fort Ord Reuse Plan developed and adopted June 19, 1997 pursuant to Title 7.85 (commencing with Section 67650) of the California Government Code. This Agreement shall be subject to the provisions of the FORA Base Reuse Plan which are incorporated herein by this reference and made a part hereof as though fully set forth herein.

(o) "Hazardous Materials" shall mean:

(1) Those substances included within the definitions of "hazardous substances", "Hazardous Materials", "toxic substances", or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) ("SARA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901 et seq.) ("RCRA"), and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., and in the regulations promulgated pursuant to said laws, all as amended;

(2) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(3) Any material, waste or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §§ 1251 et seq. (33 U.S.C. §§1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §§ 1317); (E) flammable explosives; or (F) radioactive materials;

(4) Any toxic or hazardous waste, material or substance or any oil or pesticide listed in, covered by, or regulated pursuant to, any state or local law, ordinance, rule or regulation applicable to the Site, as heretofore or hereafter amended; and

(5) Such other substances, materials and wastes which are or become regulated as hazardous or toxic under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

The term "Hazardous Materials" shall not include: construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of light industrial property, and which are used and stored in accordance with all applicable environmental ordinances and regulations.

(p) "Hazardous Materials Laws" shall mean environmental and health and

safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions.

(q) "Improvements" shall mean the horizontal and vertical improvements to be constructed by the Developer on the Site consistent with the CEQA Documents and Specific Plan, including any offsite infrastructure necessary for construction of the Improvements consistent with this Agreement.

(r) "Parties" shall mean the City and the Developer.

(s) "Permitted Exceptions" shall mean the following exceptions to title with respect to the Site:

- (1) the Redevelopment Plan;
- (2) the lien of any non-delinquent property taxes and assessments;
- (3) all existing easements over, under and across the Site for public utilities, which do not preclude Developer's intended use of the Site;
- (4) any incidental easements or other matters affecting title which do not preclude or materially impair Developer's intended use of the Site;
- (5) applicable building and zoning laws and regulations;
- (6) the provisions of this Agreement;
- (7) the Implementation Agreement;
- (8) The provisions of the Grant Deed from FORA to the Agency
- (9) other matters created by, through or under Developer; and
- (10) such other exceptions to title as may hereafter be mutually approved by the City and the Developer.

(t) "Person" or "Persons" means any individual, partnership, joint venture, corporation, limited liability company, limited liability partnership, trust or other entity, private or public with the power and authority to act and conduct business on its own behalf.

(u) "Project" shall mean (i) the Site and (ii) the Improvements.

(v) "Project Area" shall mean the Del Rey Oaks Redevelopment Project Area.

(w) "Redevelopment Plan" shall mean Redevelopment Plan for the Del Rey Oaks Redevelopment Project Area, as amended.

(x) "Site" shall mean the approximately 73 acres specifically Parcels A, D and

Cal Trans Right-of-way as more particularly described in Exhibit A attached to this Agreement.

(y) "Transfer" shall mean a transfer of this Agreement or an interest in the Developer, as more particularly described in Section 6.1.

Section 1.2 Exhibits. The following exhibits are attached to and incorporated into this Agreement:

Exhibit A: Legal Description of the Site

Exhibit B: Quitclaim Deed

ARTICLE 2. DISPOSITION OF SITE

Section 2.1 Acquisition and Sale of Site. Subject to all of the terms and conditions of this Agreement, the City hereby agrees to sell and convey the Site to Developer, and Developer hereby agrees to acquire and purchase the Site from City within fourteen (14) days of the Effective Date ("Close of Escrow"). In addition to the Site, the City agrees that upon conveyance of the Site to the Developer, the City shall reserve fifty (50) acre feet of the potable water out of the 242.50 acre feet allocated to the City by FORA for the Property for the Site and shall assign, convey and transfer all right, title and interest in and to the fifty (50) acre feet of the potable water to Developer. Additionally, the City agrees that upon conveyance of the Site to the Developer, the City shall reserve fifty (50) acre feet of the non-potable ("purple") water out of the 280.00 acre feet allocated to the City by FORA for the Property and the Site and shall assign, convey and transfer all right, title and interest in and to the fifty (50) acre feet of the non-potable water to Developer. The Developer shall be primarily responsible for obtaining any and all approvals necessary to ensure that the water allocation is available at the Site from any and all governmental entities responsible for bringing water to the Site, including obtaining a water supply verification. The City, however, agrees to and shall reasonably cooperate with Developer in connection with Developer's efforts to obtain any and all approvals necessary, provided, the City shall not be obligated to incur any expense associated with obtaining any such approvals.

Section 2.2 Purchase Price. The aggregate Purchase Price for the Site shall be Three Million Dollars (\$3,000,000).

Section 2.3 Payment of Purchase Price. The Developer shall pay the Purchase Price to the City in cash at time of Close of Escrow.

Section 2.4 Escrow.

(a) Escrow; Opening of Escrow. Within five (5) business days after the Effective Date, the City and Developer shall open an escrow (the "Escrow") with Escrow Holder by depositing with Escrow Holder a fully executed counterpart original of this Agreement, which Agreement shall serve as escrow instructions for the Escrow Holder's administration of the Escrow. The Escrow Holder is authorized to act under this Agreement, and upon indicating its acceptance of the provisions of this Section in writing, delivered to the City and the Developer within five (5) days after receipt of such counterpart original of this Agreement, shall carry out

its duties as Escrow Holder. The date Escrow Holder indicates its acceptance shall be deemed the "Opening of Escrow".

(b) Additional Instructions. The Parties shall promptly execute and deliver to Escrow Holder any appropriate separate or additional escrow instructions, which are not inconsistent with this Agreement as necessary to close the conveyance of the Site. If there is any inconsistency between the terms hereof and the terms of the escrow instructions, the terms hereof shall control unless an intent to amend the terms hereof is expressly stated in such instructions, executed by each of the Parties hereto.

Section 2.5 Condition of Title; Title Insurance.

(a) Upon the Close of Escrow for conveyance of the fee interest in the Site, the City shall convey to Developer title to the Site subject only to the Permitted Exceptions, and to the deed covenants set forth in the Quitclaim deed attached hereto as Exhibit B.

(b) At the Close of Escrow for conveyance of the fee interest in the Site, the City shall, at the Developer's sole cost and expense, cause the Title Company to deliver to Developer an ALTA Owner's Policy of Title Insurance insuring that title to the Site is free and clear of all liens, easements, covenants, conditions, restrictions, and other encumbrances of record except the Permitted Exceptions. The Developer may, at its option, obtain one or more extended coverage policies of title insurance, provided that the Developer shall pay all additional costs occasioned thereby.

Section 2.6 Escrow and Title Charges. The City shall be solely responsible for all title insurance premiums, recording fees, documentary and local transfer taxes arising hereunder, and escrow fees and charges arising hereunder shall be evenly divided.

Section 2.7 Conveyance of Title and Delivery of Possession.

(a) Subject to the mutually dependent submission, approvals and consents set forth in this Section which are conditions precedent to conveyance, and provided the Developer is not in default hereunder, conveyance by the City to the Developer of the Site in accordance with the provisions of this Section shall be completed on or prior to the Closing Date. The following obligations of the City and the Developer are conditions precedent to the Close of Escrow for the Site:

(1) The Developer shall deposit the following documents into Escrow prior to Closing for the Site:

(A) The Purchase Price required to be paid for the Site;

(B) The Quitclaim Deed in substantially the form of Exhibit B attached hereto executed by the Developer, accepting fee title to the Site from the City; and

(2) The City shall deposit the following documents into Escrow prior to Closing for the Site:

(A) The Quitclaim Deed in substantially the form of Exhibit B attached hereto, executed by the City, conveying to the Developer fee title to the Site;

(B) Such proof of the City's authority and authorization to deliver the Quitclaim Deed as Title Company may reasonably require in order to issue the policy of title insurance to Developer; and

(C) A Certification of Non-Foreign Status in accordance with I.R.C. Section 1445.

(b) Subject to the terms and conditions of this Agreement, the Parties agree to perform all acts and to execute and deliver all other documents reasonably necessary for the conveyances in sufficient time for the Site to be conveyed by the Closing Date.

Section 2.8 Escrow Holder.

(a) The Escrow Holder is authorized to:

(1) Pay and charge the Developer for any fees, charges and costs payable by Developer under this Article. Before such payments are made, the Escrow Holder shall notify the City and the Developer of the fees, charges, and costs necessary to close under the Escrow; and

(2) Disburse funds and deliver the deeds and other documents to the Parties entitled thereto when the conditions of this Escrow have been fulfilled by the City and the Developer. Such funds and other documents shall not be disbursed and delivered by the Escrow Holder unless and until it has recorded the Quitclaim Deed for the Site and has delivered to the Developer, its title insurance policy with respect to the Site.

(b) Any amendment of these escrow instructions shall be in writing and signed by the Parties. At the time of any amendment, the Escrow Holder shall agree to carry out its duties as Escrow Holder under such amendment.

(c) All communications from the Escrow Holder to the Parties shall be directed to the addressees and in the manner established in Section 8.2 of this Agreement for notices, demands and communications between or among the Parties.

(d) The liability of the Escrow Holder under this Agreement is limited to performance of the obligations imposed upon it under this Article, and any amendments hereto agreed upon by Escrow Holder.

Section 2.9 Condition of the Site.

(a) "As Is" Conveyance.

(1) THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY IS CONVEYING THE SITE ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY

REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM THE CITY AS TO ANY MATTERS CONCERNING THE SITE, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE SITE (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER, (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE SITE, (D) THE DEVELOPMENT POTENTIAL OF THE SITE, AND THE SITE'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE SITE OR ANY PARTICULAR PURPOSE, (E) THE ZONING OR OTHER LEGAL STATUS OF THE SITE OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE SITE, (F) THE COMPLIANCE OF THE SITE OR ITS OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE SITE OR THE ADJOINING OR NEIGHBORING PROPERTY, AND (H) THE CONDITION OF TITLE TO THE SITE. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE SITE FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE SITE IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE SITE AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE SITE (INCLUDING, WITHOUT LIMITATION, WHETHER THE SITE IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE SITE'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(2) Developer's Release of the City. The Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the City and its council members, board members, employees,

officers, directors, representatives, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Site, or its suitability for any purpose whatsoever, (ii) any presence of Hazardous Materials, and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(3) Scope of Release. The release set forth in Section 2.9(a)(2) hereof includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Developer's Initials: _____

(b) The provisions of this section shall survive the termination of this Agreement.

Section 2.10 Real Estate Commissions. Neither Party has obtained or engaged the services of a real estate broker in this transaction. If a real estate commission is claimed through either Party in connection with the transaction contemplated by this Agreement, then the Party through whom the commission is claimed shall indemnify, defend and hold the other Party harmless from any liability related to such commission. The provisions of this Section shall survive termination of this Agreement.

Section 2.11 Right to Terminate. The Developer has thirty (30) days from the effective date of this Agreement to complete its due diligence on the Site and Property and within which to terminate this Agreement for any reason or no reason at all with no liability to the City.

ARTICLE 3.
CONSTRUCTION OF THE IMPROVEMENTS

Section 3.1 City Approvals. Prior to commencing any construction on the Site the Developer shall have obtained approval of a Specific Plan for the Site (“Specific Plan”), including certification or approval of any environmental document required under CEQA (“CEQA Documents”) as well as any other approvals required to construct the Site, including a consistency determination from FORA. The Developer shall also have completed and submitted for the Property a proposed Specific Plan and the CEQA Documents to the City for its approval, in consultation with the City staff. The Developer shall be responsible for the payment of all fees required to complete and submit the CEQA Documents and Specific Plan. Nothing herein shall limit the reasonable discretion of the City in its consideration of the CEQA Documents and Specific Plan. Developer shall complete and submit the CEQA Documents and Specific Plan for the Development on the Property as well as for the Site. If the Developer, in the exercise of Developer’s sole discretion, concludes that it is unable or it would not be prudent to pursue to approval the Specific Plan proposed by the Developer for the Property, the Developer shall nonetheless be entitled to proceed with development and construction of the Improvements on the Site, provided Developer obtains the necessary approvals for the construction of the Improvements on the Site. The City shall cooperate with the Developer’s efforts in obtaining approval of the Specific Plan for the Property and the Site by signing any applications or other documents necessary, provided, however, the City shall not be obligated to bear any costs related to the Specific Plan or CEQA Documents, and provided, further, any such cooperation shall not impact the City’s ability to reasonably exercise its discretion with respect to consideration and approval of the Specific Plan.

The Developer acknowledges that the City retains its lawfully exercised discretion under CEQA and applicable planning and zoning law before action on the Project by the City Council or any other governmental agency or body, including but not limited to FORA, to (i) make such modifications to any entitlements, permits or approvals as may be reasonably necessary to impose feasible measures to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be reasonably avoided, (iv) determine not to proceed with the Project in the event there are substantial environmental impacts that cannot be feasibly mitigated so the Project can be approved without a statement of overriding considerations, or (v) take such other actions to approve or not approve the Project consistent with their reasonable exercise of discretion.

Section 3.2 Commencement of Construction. The Developer shall commence construction of the Improvements at the reasonable discretion of the Developer, after obtaining the approvals necessary to commence construction. Construction shall be deemed to commence on the date the Developer starts physical work on the Site pursuant to a valid Building Permit from the City. Completion of Construction. The Developer shall, using the Developer’s discretion, diligently prosecute to completion the construction of the Improvements. As between the City and the Developer, the Developer shall be solely responsible for the construction of the Improvements, including all costs of construction.

Section 3.4 Construction Pursuant to Scope and Plans. The Developer shall construct

the Improvements in substantial compliance with the terms and conditions of the CEQA Documents and the Specific Plan, as approved by the City.

Section 3.5 Mechanics' Liens. The Developer shall indemnify the City and hold the City harmless against and defend the City in any proceeding related to any mechanic's lien, stop notice or other claim brought by a subcontractor, laborer or material supplier who alleges having supplied labor or materials in the course of the construction of the Improvements or the Development by the Developer. This indemnity obligation shall survive the termination of this Agreement.

Section 3.6 Compliance with Applicable Law. The Developer shall cause all work performed in connection with construction of the Development to be performed in substantial compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, (including, without limitation, the prevailing wage provisions of Sections 1770 et seq., of the California Labor Code), and (b) all reasonable directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Site.

Section 3.7 Prevailing Wages.

(a) The Developer shall pay or cause to be paid to all workers employed in connection with the construction of the Development, not less than the prevailing rates of wages, as provided in the statutes applicable to public work contracts, including without limitation Sections 33423-33426 of the California Health and Safety Code and Sections 1770-1780 of the California Labor Code and the FORA Master Resolution.

(b) The Developer shall monitor and enforce the prevailing wage requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that the Developer fails to monitor or enforce these requirements against any contractor or subcontractor, the Developer shall be liable for the full amount of any underpayment of wages, plus costs and attorneys' fees, as if the Developer was the actual employer, and the City or the State Department of Industrial Relations may withhold monies owed to the Developer, may impose penalties on the Developer in the amounts specified herein, may take action directly against the contractor or subcontractor as permitted by law, and/or may declare the Developer in default of this Agreement (subject to the notice and cure rights provided in this Agreement) and thereafter pursue any of the remedies available under this Agreement.

(c) Any contractor or subcontractor who is at the time of bidding debarred by the Labor Commissioner pursuant to Section 1777.1 of the California Labor Code is ineligible to bid on the construction of the Improvements or to receive any contract or subcontract for work covered under this Agreement. The Developer agrees to include, or cause to be included, this paragraph (c) in all bid specifications for work covered under this Agreement.

(d) The Developer agrees to include, or cause to be included, the above provisions in all bid specifications for work covered under this Agreement.

(e) The Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq. and implementing regulation or comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations in connection with construction of the improvements or any other work undertaken or in connection with the Site. This indemnity obligation shall survive the completion of construction of the Project and the termination of this Agreement.

ARTICLE 4.
OBLIGATIONS WHICH CONTINUE THROUGH
AND BEYOND THE COMPLETION OF CONSTRUCTION

Section 4.1 Use of the Project. Throughout the term of this Agreement, the Developer shall not use or operate the Site for any use other than as contemplated in this Agreement, Fort Ord Reuse Plan, the Specific Plan and CEQA Documents or for such other uses as may be consistent with all City and other governmental approvals.

Section 4.2 Maintenance. The Developer hereby agrees that, after the Close of Escrow and prior to completion of construction of the Improvements, the Site shall be maintained in the same (or better) condition as existed at the Close of Escrow, and in accordance with industry health and safety standards, and that, once the Project is completed, the Project shall be well maintained as to both external and internal appearance of the buildings, the common areas, and the parking areas. The Developer shall maintain or cause to be maintained the Improvements in good repair and working order, and in a neat, clean and orderly condition, including the walkways, driveways, parking areas and landscaping, and from time to time make all necessary and proper repairs, renewals, and replacements. In the event that there arises a condition in contravention of the above maintenance standard, then the City shall notify the Developer in writing of such condition, giving the Developer sixty (60) days from receipt of such notice to commence and thereafter diligently to proceed to cure said condition. In the event the Developer fails to cure or commence to cure the condition within the time allowed, the City shall have the right to perform all acts necessary to cure such a condition, or to take other recourse at law or equity the City may then have. The City shall receive from the Developer the City's reasonable cost in taking such action and shall provide reasonable evidence of such costs to the Developer.

Section 4.3 Developer To Indemnify City.

(a) Except to the extent caused by the negligence or willful misconduct of the City, the Developer shall indemnify, defend (with counsel approved by City) and hold harmless the City, and its respective elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the "Indemnitees") from and against any and all

liabilities, losses, costs, expenses (including without limitation attorneys' fees and costs of litigation), claims, demands, actions, suits, causes of action, writs, judicial or administrative proceedings, penalties, deficiencies, fines, orders, judgments and damages (all of the foregoing collectively "Claims") which in any manner, directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, result from, or relate to: (i) the Improvements; (ii) performance of this Agreement on the part of the Developer or any contractor or subcontractor of Developer; and/or (iii) the construction, operation, maintenance or management of the Improvements, whether or not any insurance policies shall have been determined to be applicable to any such Claims.

(b) The Developer shall pay any amounts determined to be owing under this indemnity. The duty of Developer to indemnify includes the duty to defend the Indemnitees in any court action, administrative action, or other proceeding brought by any third party arising from the Improvements or the Site. Developer's obligations set forth in this Section shall survive the termination of this Agreement. Developer's indemnification obligations set forth in this Section 4.3 shall not apply to Claims to the extent arising from the negligence or willful misconduct of the Indemnitees.

Section 4.4 Hazardous Materials.

(a) Certain Covenants and Agreements. Following possession of the Site, the Developer hereby covenants and agrees that:

(1) The Developer shall not knowingly permit the Site or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Site in violation of any applicable law;

(2) The Developer shall keep and maintain the Project and each portion thereof in compliance with, and shall not cause or permit the Project or any portion thereof to be in violation of, any Hazardous Materials Laws;

(3) Upon receiving actual knowledge of the same the Developer shall within ten (10) days advise the City in writing of: (A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer or the Project pursuant to any applicable Hazardous Materials Laws; (B) any and all claims made or threatened by any third party against the Developer or the Project relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as "Hazardous Materials Claims"); (C) the presence of any Hazardous Materials in, on or under the Site in such quantities which require reporting to a government agency; or (D) the Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project classified as "borderzone property" under the provisions of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Project under any Hazardous Materials Laws. If the City reasonably determines that the Developer is not adequately responding to a Hazardous Material Claim, the

City shall have the right, upon ten (10) days written notice to the Developer, to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any such Hazardous Materials Claims and to have its reasonable attorney's fees in connection therewith paid by the Developer.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 4.3, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its board members, officers, and employees from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the Developer, its agents, employees, or contractors to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Project; (2) the presence in, on or under the Project of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Site; or (3) any activity carried on or undertaken on or off the Project, subsequent to the conveyance of the Site to the Developer, and whether by the Developer or any employees, agents, contractors or subcontractors of the Developer at any time occupying or present on the Site, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Site (collectively "Indemnification Claims"). The foregoing indemnity shall further apply to any residual contamination on or under the Site, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws.

(c) No Limitation. The Developer hereby acknowledges and agrees that the Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 4.4(b) above, are in no way limited or otherwise affected by any information the City may have concerning the Project and/or the presence within the Project of any Hazardous Materials, whether the City obtained such information from the Developer or from its own investigations.

Section 4.5 Non-Discrimination.

(a) Developer covenants and agrees for itself, its successors and its assigns in interest to the Site or any part thereof, that there shall be no discrimination against or segregation of any person or persons on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. All deeds, leases, or contracts for the sale, lease, sublease, or other transfer of the Site shall contain or be subject to the nondiscrimination or non-segregation clauses hereafter prescribed.

Section 4.6 Mandatory Language in All Subsequent Deeds, Leases and Contracts. All

deeds, leases or other real property conveyance contracts entered into by the Developer on or after the date of execution of this Agreement as to any portion of the Site or the Project shall contain the following language:

(a) In Deeds:

(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(b) In Leases:

(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as

defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(c) In Contracts:

(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

Section 4.7 Mitigation Monitoring Plan. The Developer shall comply with any mitigation measures that may be included in any CEQA Documents prepared for the Project and adopted by the City.

ARTICLE 5.
ASSIGNMENT AND TRANSFERS

Section 5.1 Definitions. As used in this Article 5, the term "Transfer" means:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode of form, of or with respect to this Agreement, or of the Site, or any part thereof or any interest therein or of the Project constructed thereon, or any contract or agreement to do any of the same; or

(b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to more than fifty percent (50%) ownership interest in the Developer, or any contract or agreement to do any of the same, provided that such transfer does not result in a change of Control.

Section 5.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of development and operation of the Improvements on the Site and its subsequent use in accordance with the terms of this Agreement. The qualifications and identity of the Developer are of particular concern to the City, in view of:

- (a) The importance of the redevelopment of the Site to the general welfare of the community; and
- (b) The fact that a Transfer as defined in Section 5.1 above is for practical purposes a transfer or disposition of the Site.

It is because of the qualifications and identity of the Developer that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 5.3 Prohibited Transfers. The limitations on Transfers set forth in this Article 5 shall apply from the date of this Agreement until the completion of construction of the Improvements. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the City, which shall not be unreasonably withheld, conditioned, or delayed. Any Transfer made in contravention of this Section 5.3 shall be void and shall be deemed to be a default under this Agreement, whether or not the Developer knew of or participated in such Transfer.

Section 5.4 Permitted Transfers. Notwithstanding the provisions of Section 5.3, the following Transfers shall be permitted so long as the conditions of Section 5.5 are complied with:

- (a) Any Transfer creating a Security Financing Interest.
- (b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest.
- (c) Any Transfer resulting directly from the death or mental incapacity of an individual.
- (d) The conveyance or dedication of a portion of the Site to any public entity, including a public utility, required to allow for the development of the Improvements.
- (e) The granting of temporary or permanent easements or permits to facilitate development of the Project.
- (f) A Transfer to an Affiliate of Developer, provided that such Transfer does not result in a change of Control.
- (g) A Transfer otherwise approved by the City.

As a condition of the City's approval of a Transfer described in Section 5.4(f), the City must review and approve the transferee's organizational documents for the purposes of determining that such transferee is controlled by the Developer.

Section 5.5 Effectuation of Permitted Transfers.

(a) Other than as permitted in Section 5.4, no Transfer of a direct interest in this Agreement shall be permitted unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an agreement reasonably satisfactory to the City and in form recordable among the land records, expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of this Agreement; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation. The City shall grant or deny approval of a proposed Transfer within sixty (60) days of receipt by the City of the Developer's request for approval of a Transfer, which request shall include evidence of the proposed transferee's business expertise and financial capacity.

(b) Any assignment of rights and/or delegation of obligations under this Agreement in connection with a Transfer of a direct interest in this Agreement (whether or not City approval is required) shall be in writing executed by Developer and the assignee or transferee, which written agreement shall name the City as an express third party beneficiary with respect to such agreement (the "Assumption Agreement") with a copy thereof delivered to the City within thirty (30) days after the effective date thereof. Upon Transfer of a direct interest in this Agreement pursuant to an Assumption Agreement, the assignor shall be relieved of liability with respect to any such obligations relating to the Project accruing from and after the date of such assignment or transfer. Notwithstanding the foregoing, unless such assignee specifically assumes pursuant to the Assumption Agreement the obligations under this Agreement to indemnify the City with respect to the Project, the assignor will retain such obligations and remain jointly and severally liable for such indemnity obligations with such assignee.

ARTICLE 6.
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 6.1 No Encumbrances Except for Development Purposes. Prior to completion of construction of the Improvements, only mortgages, deeds of trust, assignment of rents and security agreements, and other real property security instruments to secure the funds necessary for the construction and permanent financing of the Improvements are permitted to be placed upon the Site. Such permitted security instruments and related interests shall be referred to as "Security Financing Interests." The Developer shall promptly notify the City of any Security Financing Interest that has been or will be created or attached to Developer's interest in the Site.

ARTICLE 7.
DEFAULT AND REMEDIES

Section 7.1 Application of Remedies. The provisions of this Article shall govern the Parties' remedies for breach of this Agreement.

Section 7.2 Fault of City.

(a) Event of Default. Following notice and cure as set forth in subsection (b) below, each of the following events constitutes a "City Event of Default" and a basis for the Developer to take action against the City:

(1) The City fails to convey the Site as provided in this Agreement and the Developer is otherwise entitled by this Agreement to such conveyance.

(2) The City breaches any other material provision of this Agreement.

(b) Notice and Cure Procedure; Remedies. Upon the occurrence of any of the above-described events, the Developer shall first notify the City in writing of its purported breach or failure, giving the City thirty (30) days from receipt of such notice to cure such breach or failure. In the event the City does not then cure the default within such thirty (30)-day period (or, if the default is not reasonably susceptible of cure within such thirty (30)-day period, the City fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the Developer shall be entitled to any rights afforded it in law or in equity by pursuing any or all of the following remedies: (1) terminating this Agreement by written notice to the City; (2) prosecuting an action for damages subject to the limitation on damages set forth in Section 7.5; or (3) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages).

Section 7.3 Fault of Developer.

(a) Event of Default. Following notice and cure as set forth in subsection (b) below, each of the following events constitutes a "Developer Event of Default" and a basis for the City to take action against the Developer:

(1) The Developer fails to construct the Improvements in the manner set forth in Article 3.

(2) The Developer breaches any provision of Article 4.

(3) The Developer attempts or completes a Transfer except as permitted under Article 5.

(4) The Developer's: (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or ninety (90) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or ninety (90) days after the filing; (4) insolvency; or (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

(5) The Developer defaults under any Security Financing Interest and has not cured such default within the applicable time period contained in such agreement.

(6) The Developer breaches any other material provision of this

Agreement.

(b) Notice and Cure Procedure. Upon the happening of any of the above-described events the City shall first notify the Developer in writing of its purported breach or failure, giving the Developer thirty (30) days from receipt of such notice to cure such breach or failure. If the Developer does not cure within the periods set forth above, then the event shall constitute a "Developer Event of Default" and the City shall be afforded all of the following rights and remedies:

(1) Prior to Conveyance of the Site. With respect to a Developer Event of Default occurring prior to the Close of Escrow of the Site, the City may terminate in writing this Agreement and shall have no further liability to the Developer. The above remedy shall constitute the exclusive remedy of the City for a Developer Event of Default occurring prior to the Close of Escrow of the Site, in recognition of the fact that development of the Site is an inherently risky and uncertain undertaking.

(2) Between Close of Escrow and Completion of Construction of the Improvements. With respect to a Developer Event of Default occurring after the Close of Escrow but prior to the completion of construction of the Improvements, the City may: (B) prosecute an action for damages subject to the limitations in Section 7.5; (C) seek specific performance of this Agreement against the Developer;; and (E) exercise any other remedy against the Developer permitted by law, provided, however, the City shall not be entitled to recover any damages except as set forth in Section 7.5.

(3) After Completion of Construction of the Improvements. With respect to a Developer Event of Default occurring in the ownership and operation of the Site and the Improvements after the completion of construction of the Improvements, the City may: (A) prosecute an action for damages against the Developer subject to the limitations in Section 7.5; (B) seek specific performance of this Agreement against the Developer and (C) exercise any other remedy against the Developer permitted by law.

Section 7.4 Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

Section 7.5 Limitation on Damages. In any action for damages arising out of a Default or termination of this Agreement under Section 7.2 or 7.3, the amount of damages recoverable by a Party shall be limited to:

(1) Amounts then owed but not paid to the other Party at the time of default;

(2) Damages resulting from actual documented third party expenditures made by the non-Defaulting Party (but only with respect to Defaults or terminations arising prior to completion of the Project);

(3) An award of attorneys' fees and other costs allowable under Section

8.8.

Section 7.6 Survival. Upon termination of this Agreement under this Article 7, the following provisions of this Agreement shall survive: the release Section 2.9(a)(2) and the indemnification obligations in Sections 3.7, 4.3, 4.4(b), and 8.17. This Section 7.7 exists for reference purposes only, and does not alter the scope or nature of the surviving provisions.

ARTICLE 8. GENERAL PROVISIONS

Section 8.1 Identity of Developer. The Developer represents and warrants to the City as of the Effective Date and as of the Close of Escrow, as follows:

(a) Organization. The Developer is a California limited liability company duly organized, validly existing and in good standing under the laws of California with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement. The members of Developer are Michael W. Kranyak.

(b) Authorization. The Developer has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement performance of the Agreement. Upon the date of this Agreement, this Agreement shall constitute a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms.

(c) No Conflict. The execution, delivery and performance of this Agreement by the Developer does not and will not conflict with, or constitute a violation or breach of, or constitute a default under (i) the charter or incorporation documents of the Developer, (ii) any applicable law, rule or regulation binding upon or applicable to the Developer, or (iii) any material agreements to which the Developer is a party.

(d) No Litigation. Unless otherwise disclosed in writing to the City prior to the date of this Agreement, there is no existing or, to the Developer's actual knowledge, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the Developer or the Site that would, if adversely determined, materially and adversely affect the Developer or the Site or the Developer's ability to perform its obligations under this Agreement or to develop and operate the Project.

(e) No Material Adverse Change. There has been no material adverse change in the financial condition of the Developer since the date of this Agreement.

(f) Default Under Other Agreements. There is no event, act or omission which constitute, or but for the passage of time or the giving of notice, or both, would constitute a breach, violation or default under any agreement materially related to the development or operation of the Project, including, but not limited to, any other partnership agreement, joint venture agreement, or loan agreement.

Until the expiration or earlier termination of this Agreement, Developer shall, upon

learning of any fact or condition which would cause any of the warranties and representations in this Section 8.1(a) not to be true, immediately give written notice of such fact or condition to the City. Upon the Developer's Transfer prior to the Close of Escrow, the Developer shall cause the Developer's assignee to update the representations and warranties set forth above.

Section 8.2 Notices, Demands and Communications. Formal notices, demands, submittals and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, i) delivered personally; ii) transmitted by email together with a copy of such email being deposited in U.S. Mail ; or iii) by reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of the City and the Developer as follows:

CITY: City of Del Rey Oaks
650 Canyon Del Rey Road
Del Rey Oaks, CA 93940
Attn: City Manager
citymanager@delreyoaks.ort

with copies to: Goldfarb & Lipman, LLP
1300 Clay Street
Oakland, Ca 94612
Attn: Karen Tiedemann
ktiedemann@goldfarblipman.com

Developer: Attn: Mike Kranyak, Managing Member
Monterey Peninsula Properties, LLC
200 Clocktower Place, Suite E-204
Carmel, CA 93922
Email: mikekranyak@arrival.net
seankranyak@yahoo.com

with copies to: William L. Alexander
Alexander & Associates, PLC
1925 G Street
Bakersfield, CA 93301
Email: walexander@alexander-law.com

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 8.2. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

Section 8.3 Non-Liability of Officials, Employees and Agents. No member, official,

employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or on any obligation under the terms of this Agreement. Similarly, no member, owner, officer, or agent of the Developer shall be personally liable to the City, or any successor in interest, in the event of any default or breach by the Developer or for any amount which may become due to the City or on any obligation under the terms of this Agreement.

Section 8.4 Enforced Delay. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority (except for restrictions or priorities established by the Party required to perform the action required under this Agreement); unusually severe weather; inability to secure necessary labor, materials or tools; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of a Party shall not excuse performance by such Party, including without limitation the Developer's inability to obtain financing for the Project or the economic infeasibility of the Project) ("Force Majeure"). An extension of time for Force Majeure shall only be for the period of the enforced delay, which period shall commence to run from the time of the notification of the delay by the Party requesting the extension to the other Party. The Party requesting an extension of time under this Section 8.4 shall give notice promptly following knowledge of the delay to the other Party. If, however, notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after knowledge of the commencement of the delay, the period shall commence to run upon the earlier of (i) thirty (30) days prior to the giving of such notice or (ii) the date that the other Party received knowledge of the events giving rise to the delay.

Section 8.5 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of its provision.

Section 8.6 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 8.7 Severability. If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 8.8 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, each Party shall bear their own attorneys' fees and no attorneys' fees may be awarded to the Party prevailing in the action.

In the event any legal action is commenced challenging this Agreement, the City's authority to enter into this Agreement, the transactions contemplated by this Agreement or the

Project, the Developer shall indemnify and defend the City from any and all costs, claims, losses, demands, and expenses, including, but not limited to, costs of defense with counsel selected by the Developer in the Developer's reasonable discretion, damages or liability of any nature whatsoever, arising in any manner from such challenge. In the event Developer fails for any reason to defend the City, the City shall have no obligation to defend against such challenge.

Section 8.9 Binding Upon Successors; Covenants to Run With Land. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties; provided, however, that there shall be no Transfer except as permitted in Section 5.4. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

The terms of this Agreement shall run with the land, and shall bind all successors in title to the Site until the termination of this Agreement, except that the provisions of this Agreement that are specified to survive termination of this Agreement shall run with the land in perpetuity and remain in full force and effect following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Site, or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases the Site, or the applicable portion of the Site, from the requirements of this Agreement.

Section 8.10 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 8.11 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the conveyance and development of the Site and the development of the Project.

Section 8.12 Discretion Retained By City. The City's execution of this Agreement in no way limits the reasonable discretion of the City in the permit and approval process in connection with the Project.

Section 8.13 Counterparts. This Agreement may be executed in counterparts and multiple originals.

Section 8.14 Amendments. The Parties can amend this Agreement only by means of a writing signed by both Parties.

Section 8.15 Recordation of Memorandum of Agreement. The Developer consents to the recordation of a memorandum of this Agreement in the Official Records against Developer's interest in the Property.

Section 8.16 Standard of Approval. Any consents or approvals required or permitted under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies.

Section 8.17 Indemnity. To the extent permitted by law, the Developer undertakes and agrees to indemnify, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its commissioners, councilmembers, officers, employees, agents, and its successors (the "Indemnified Parties"), from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorney's fees and costs of litigation and litigation-related matters, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement, except to the extent caused by the negligence or willful misconduct of the Indemnified Parties. Notwithstanding the above, the Developer's indemnification of the Indemnified Parties set forth herein or elsewhere in this Agreement shall not include any liability arising out of or related to *City of Del Rey et al. vs. Federal/ JER*, filed in Monterey Superior Court as M107509, *Federal/ JER et al. vs County of Monterey, et al.*, filed in Monterey Superior Court as M120418 (collectively "Federal/JER Litigation").

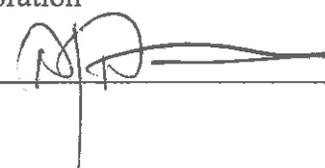
The City agrees to indemnify, hold harmless and defend, the Developer, its partners, officers, employees, agents and successors ("Developer Parties"), from and against all suits and causes of action, claims, losses, demands and expense, including, but not limited to, reasonable attorney's fees and costs of litigation and litigation-related matters, damage or liability of any nature whatsoever, arising out of the Federal/JER Litigation, except to the extent caused by the negligence or willful misconduct of the Developer Parties.

Section 8.18 Effectiveness of Agreement. This Agreement is dated for convenience only and shall only become effective on the Effective Date.

WHEREFORE, the Parties have executed this Agreement as of the date first above written.

CITY:

CITY OF DEL REY OAKS, a municipal corporation

By:  

Date: 7/14/14

APPROVED AS TO FORM

By: 

City Attorney

DEVELOPER:

MONTEREY PENINSULA PROPERTIES, LLC, a California limited liability company

Name: 

Title: MEMBER

EXHIBIT A
Legal Description of the Site

EXHIBIT B
QUITCLAIM DEED

Del Rey Oaks Community Development Legal Description for Parcel "A"

The land referred to is situated in the County of Monterey, City of Del Rey Oaks, State of California, and is described as follows:

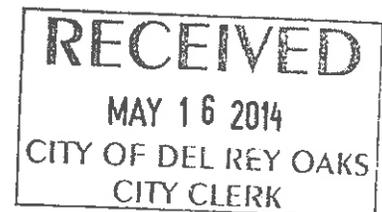
Beginning at a point on the northwesterly boundary of Parcel 1 as shown on the "Record of Survey showing Boundary of a 341.87 Acre Parcel of Land for Economic Development Conveyance", filed June 19, 2000 in the Office of the County Recorder of Monterey County, California, and now on file in Volume 23 of Surveys at Page 103 therein, said point being distant South 88°47'40" East, 1597.19 feet from the most northerly corner of said Parcel 1; thence leaving said northwesterly boundary of said Parcel 1

- 1) South 23°14'55" West, 1431.18 feet; thence
- 2) North 50°41'04" West, 773.36 to a point on the easterly boundary of North/South Road as shown on the "Record of Survey Boundary of 18 Monterey County Parcels", filed January 31, 1997 in the Office of the County Recorder of Monterey County, California, filed in Volume 20 of Surveys at Page 110 therein; thence along said easterly boundary of North/South Road
- 3) North 23°14'55" East, 916.24 feet to the most northwesterly boundary corner of said Parcel; thence leaving said easterly boundary of said North/South Road, and along said northwesterly boundary of said Parcel 1
- 4) North 88°47'40" West, 801.76 feet to the POINT OF BEGINNING.

Containing 20.00 Acres, more or less, as shown on Exhibit "A" attached hereto and a part hereof.



Frank Lucido Jr., PLS 8368
May 15, 2014
Project #1280



Del Rey Oaks Community Development Legal Description for Parcel "B"

The land referred to is situated in the County of Monterey, City of Del Rey Oaks, State of California, and is described as follows:

Beginning at the most northerly corner of Parcel 1 as shown on the "Record of Survey showing Boundary of a 341.87 Acre Parcel of Land for Economic Development Conveyance", filed June 19, 2000 in the Office of the County Recorder of Monterey County, California, and now on file in Volume 23 of Surveys at Page 103 therein; thence along the northwesterly boundary of said Parcel 1

- 1) South 88°47'40" East, 1597.19 feet; thence leaving said northwesterly boundary of said Parcel 1
- 2) South 23°14'55" West, 1431.18 feet; thence
- 3) North 50°41'04" West, 773.36 to a point on the easterly boundary of North/South Road as shown on the "Record of Survey Boundary of 18 Monterey County Parcels", filed January 31, 1997 in the Office of the County Recorder of Monterey County, California, filed in Volume 20 of Surveys at Page 110 therein; thence along said easterly boundary of said North/South Road
- 4) South 23°14'55" West, 199.30 feet to a point of curvature; thence along a tangent curve concave to the east, having a radius of 150.00 feet
- 5) 193.56 feet along said curve through a central angle of 73°56'00"; thence along the northeasterly boundary of South Boundary Road as shown said "Record of Survey..." filed in Volume 20 of Surveys at Page 110
- 6) South 50°41'04" East, 2346.70 to a point of curvature; thence along a tangent curve concave to the southwest, having a radius of 2430.00 feet
- 7) 356.43 feet along said curve through a central angle of 08°24'15"; thence leaving said northeasterly boundary of said South Boundary Road
- 8) North 62°20'38" East, 1957.07 feet to a point on the northeasterly boundary of said Parcel 1; thence northerly along said northeasterly boundary of said Parcel 1, and along a non-tangent curve concave to the northeast, the center of which bears North 43°17'45" East, and having a radius of 3310.00 feet
- 9) 2261.17 feet along said curve through a central angle of 39°08'26" to the POINT OF BEGINNING.

Containing 140.22 Acres, more or less, as shown on Exhibit "A" attached hereto and a part hereof.



Frank Lucido Jr., PLS 8368
May 15, 2014
Project #1280

Del Rey Oaks Community Development Legal Description for Parcel "C"

The land referred to is situated in the County of Monterey, City of Del Rey Oaks, State of California, and is described as follows:

Beginning at the most northwesterly terminus of that certain course shown as South 46°42'15" East, 1055.75 feet on the northeasterly boundary of Parcel 1 as shown on the "Record of Survey showing Boundary of a 341.87 Acre Parcel of Land for Economic Development Conveyance", filed June 19, 2000 in the Office of the County Recorder of Monterey County, California, and now on file in Volume 23 of Surveys at Page 103 therein; thence leaving said northeasterly boundary of said Parcel 1

- 1) South 62°20'38" West, 1957.07 feet to a point on the northeasterly boundary of South Boundary Road as shown the "Record of Survey Boundary of 18 Monterey County Parcels", filed January 31, 1997 in the Office of the County Recorder of Monterey County, California, filed in Volume 20 of Surveys at Page 110 therein; thence along said easterly boundary of said North/South Road
- 2) South 42°16'49" East, 1710.55 feet to a point of curvature; thence along a tangent curve concave to the northeast, having a radius of 3570.00 feet
- 3) 376.27 feet along said curve through a central angle of 06°02'20"; thence
- 4) South 48°19'09" East, 65.00 feet; thence leaving said northeasterly boundary of said South Boundary Road
- 5) North 76°00'00" East, 650.00 feet; thence
- 6) North 46°00'00" East, 1318.84 feet to a point on the northeasterly boundary of said Parcel 1; thence northerly along said northeasterly boundary of said Parcel 1, and along a non-tangent curve concave to the west, the center of which bears South 59°43'24" West, and having a radius of 3060.00 feet
- 7) 877.34 feet along said curve through a central angle of 16°25'39"; thence
- 8) North 46°42'15" West, 1055.75 feet to the POINT OF BEGINNING.

Containing 95.72 Acres, more or less, as shown on Exhibit "A" attached hereto and a part hereof.



Frank Lucido Jr., PLS 8368
May 15, 2014
Project #1280

Del Rey Oaks Community Development Legal Description for Parcel "D"

The land referred to is situated in the County of Monterey, City of Del Rey Oaks, State of California, and is described as follows:

Beginning at a point on the northeasterly boundary of Parcel 1 as shown on the "Record of Survey showing Boundary of a 341.87 Acre Parcel of Land for Economic Development Conveyance", filed June 19, 2000 in the Office of the County Recorder of Monterey County, California, and now on file in Volume 23 of Surveys at Page 103 therein, said point being distance South 21°57'19" East, 495.22 feet from the northerly terminus of that certain course shown as South 21°57'19" East, 1618.78 feet on said "Record of Survey ..." filed in Volume 23 of Surveys at Page 103.; thence leaving said northeasterly boundary of said Parcel 1

- 1) North 21°57'19" West, 495.22 feet to a point of curvature; thence along a tangent curve concave to the west, having a radius of 3060.00 feet
- 2) 444.43 feet along said curve through a central angle of 08°19'17"; thence leaving said northeasterly boundary of said Parcel 1
- 3) South 46°00'00" West, 1318.84 feet; thence
- 4) South 76°00'00" West, 650.00 feet to a point on the northeasterly boundary of South Boundary Road as shown the "Record of Survey Boundary of 18 Monterey County Parcels", filed January 31, 1997 in the Office of the County Recorder of Monterey County, California, filed in Volume 20 of Surveys at Page 110 therein; thence along said easterly boundary of said North/South Road
- 5) South 48°19'09" East, 182.49 feet; thence leaving said northeasterly boundary of said South Boundary Road
- 6) North 76°00'33" East, 962.00 feet to a point of curvature; thence along a tangent curve concave to the south, having a radius of 3518.61 feet
- 7) 898.76 feet along said curve through a central angle of 14°38'06" to the POINT OF BEGINNING.

Containing 16.98 Acres, more or less, as shown on Exhibit "A" attached hereto and a part hereof.



Frank Lucido Jr., PLS 8368
May 15, 2014
Project #1280

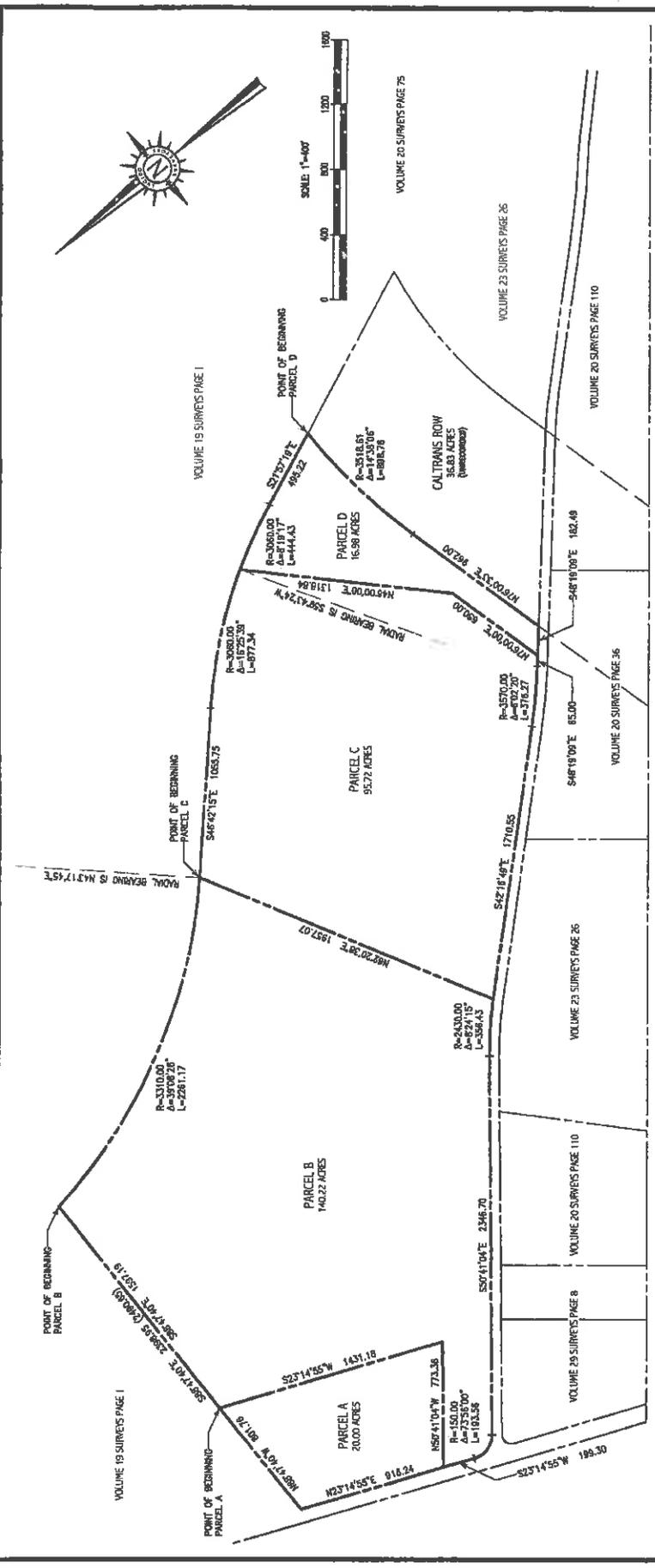


EXHIBIT "A"

FOR THE LEGAL DESCRIPTIONS OF PARCEL A, PARCEL B, PARCEL C, PARCEL D

TENTATIVE PARCEL MAP
 FOR THE
CITY OF DEL REY OAKS COMMUNITY DEVELOPMENT
LOT 36, BLOCK 4 IN VOLUME 5 OF CITIES & TOWNS AT PAGE 22
 RECORDS OF MONTEREY COUNTY
 APN 012-491-010-000 PER DOCUMENT: 20110356428
 CITY OF DEL REY OAKS COUNTY OF MONTEREY STATE OF CALIFORNIA

PRELIMINARY DRAWING
 FOR REVIEW PURPOSES ONLY
 NOT FOR CONSTRUCTION

BASIS OF BEARINGS:
 THE BEARING OF COURSE 46°42'15" EAST AS SHOWN ON THE MAP FILED IN VOLUME 22 OF SURVEYS AT PAGE 105, AND ALL OTHER BEARINGS AS FOUND BUT NOT MONUMENTED IS THE BASIS OF BEARINGS FOR THIS SURVEY.

DATE: MAY 15, 2014
 ONE SHEET ONLY

PREPARED FOR
Monterey Peninsula Partners
 BY
LUCIDO SURVEYORS
 Boundary and Construction Surveys · Topographic and Planning Mapping
 ALTA Surveys and GIS Database Management · Land Planning and Consulting

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PROJECT No. 1280
 SCALE: 1"=400'
 MAY 2014

