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RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City Attorney
City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501

FIRST AMERICAN TITLE COMPANY
HEREBY CERTIFIES THAT THIS IS A TRUE AND
CORRECT COPY OF THE ORIGINAL DOCUMENT

BY: RC

RECORDED: 5/17/16

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Government Code Section 27383

**DEVELOPMENT AGREEMENT
DEL MONTE WAREHOUSE PROJECT**

This Development Agreement is entered into on January 15, 2015 ("Effective Date"), between the City of Alameda, a municipal corporation, ("City") and TL Partners I, LP, a California limited partnership ("Developer") regarding the Del Monte Warehouse project. The City and the Developer are sometimes referred to collectively as the "Parties" and either individually as a "Party."

RECITALS

This Development Agreement is based on the following facts, understandings and intentions of City and Developer:

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 et seq. of the Government Code (the "Development Agreement Legislation") which authorizes City and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement, establishing certain development rights in the property.

B. Pursuant to Government Code Section 65864, City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements, which procedures and requirements are contained in Alameda Municipal Code Chapter XXX, Article VII, Code Sections 30-91 thru 30-95 (the "City Development Agreement Regulations"). This Development Agreement has been processed in accordance with the City Development Agreement Regulations.

C. The Developer is currently in contract to acquire approximately 11.06 acres of real property located at the northeast corner of the intersection of Sherman Street and Buena Vista Avenue and commonly known as the Del Monte Warehouse, with an address of 1501 Buena Vista Avenue, City of Alameda, County of Alameda (APN 072-0383-004), as more specifically described in Exhibit A, attached hereto ("Del Monte Parcel").

D. City is the owner of approximately .45 acres of property located adjacent to the Del Monte Property, identified as assessor's parcel numbers 072-0333-001 and -002, as shown in

Exhibit B, attached hereto ("City Parcel"). The City Parcel and the Del Monte Parcel are referred to collectively herein as the "Property".

E. City is desirous of advancing the socioeconomic interests of City and its residents by promoting the productive use of underdeveloped property and encouraging quality development and economic growth, thereby enhancing employment opportunities for residents and expanding City's property tax base. City is also desirous of gaining the Public Benefits described in Section 5, some of which are in addition to those dedications, conditions and exactions required by laws or regulations and as set forth in this Development Agreement, and which advance the planning objectives of, and provide benefits to, City.

F. City has determined that by entering into this Development Agreement: (1) City will ensure the productive use of underdeveloped property and foster orderly growth and quality development in City; (2) development will proceed in accordance with the goals and policies set forth in the City of Alameda General Plan ("General Plan") and will implement City's stated General Plan policies; (3) City will receive substantially increased property tax and sales tax revenues; (4) City will benefit from increased employment opportunities for residents of City created by the retail businesses in the commercial space within the Project; and (5) City will receive the Public Benefits provided by the Project for the residents of City.

G. The terms and conditions of this Development Agreement have undergone extensive review by the City, the Developer and their respective legal counsel. The Planning Board and the City Council at publicly noticed meetings find the Development Agreement to be in conformance with the City General Plan, the Development Agreement Legislation, and the City Development Agreement Regulations. The City Council finds that the economic interests of City's residents and the public health, safety and welfare will be best served by entering into this Development Agreement.

H. The Developer has applied to the City for Master Plan approval for the Property, Affordable Housing Density Bonuses and waivers, Development Plan approval for the portion of the site occupied by the existing warehouse (City file #PLN14-0059) and this Development Agreement. Developer proposes to develop the Property into a transit-oriented destination, comprised of residential mixed use with up to 380 housing units (which includes fifty-five (55) affordable units) and 30,000 square feet of commercial space ("Project"), consistent with the Master Plan approved on December 16, 2014 via Ordinance No. 3175 ("Master Plan").

I. This Development Agreement was adopted by ordinance of the City Council, after notice and public hearings before the Planning Board and City Council and after City Council adoption of a Mitigated Negative Declaration in accordance with the California Environmental Quality Act, Public Resources Code section 21000 and following.

J. For the reasons recited herein, City and Developer have further determined that the Project is a transit-oriented destination development for which this Development Agreement is appropriate. This Development Agreement will eliminate uncertainty regarding Project Approvals (as defined below), thereby encouraging planning for, investment in and commitment to use and development of the Property. Continued use and development of the Property in accordance with this Development Agreement is anticipated to, in turn, provide substantial

benefits and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Statute was enacted.

NOW, THEREFORE, the Parties agree as follows:

1. **The Property.** The Property which is the subject of this Development Agreement is described in Recitals C and D, above.
2. **The Project.** The Developer is authorized to develop and use the Property for a mixed use housing development, in conformance with the terms and conditions of the Master Plan. The Master Plan Ordinance and this Agreement contains the required terms regarding the permitted uses of the Property, the intensity of use, the maximum height and size of proposed buildings, and provisions for reservation of dedication of land for public purposes. (Government Code section 65865.2.)
3. **Effective Date; Term.** The Effective Date of this Development Agreement is stated in the first paragraph of this Development Agreement and represents the later of: (a) thirty (30) days after the date the Ordinance approving this Development Agreement is adopted by the City Council, or (b) if a referendum petition is timely and duly circulated and filed, the date the election results on the ballot measure by City voters approving this Development Agreement are certified by the City Council in the manner provided by the Elections Code. This Development Agreement shall be executed by the City within ten (10) days after the Effective Date and recorded as provided in Government Code Section 65868.5.
 - a. **Term.** The term of this Development Agreement is fifteen (15) years, beginning on the Effective Date. The Term has been established by the Parties as a reasonable estimate of the time required to develop the Project and obtain the Public Benefits. In establishing and agreeing to such Term, City has determined that the Project Approvals and this Development Agreement incorporate sufficient provisions to permit City to adequately monitor and respond to changing circumstances and conditions in granting permits and approvals and undertaking actions to carry out the development of the Project.
 - b. **Termination Following Expiration.** Following the expiration of the Term, or the earlier completion of development of the Project and all of Developer's obligations in connection therewith, this Development Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions of Section 20 hereof.
4. **Project Approvals.** Developer has applied for and obtained various environmental and land use approvals and entitlements related to the development of the Project, as described below. For purposes of this Development Agreement, "Project Approvals" shall mean the Initial Project Approvals and the Subsequent Approvals (as defined herein). The term "Initial Project Approvals" shall mean all of the approvals, plans and agreements described in this Section 4(a) through (i).
 - a. **CEQA.** The documentation prepared under CEQA including the Original EIR (State Clearinghouse No.2002102118), which was certified with findings by the City Council on July 17, 2007, by Resolution No. 14134 (certifying EIR) and Resolution No.

14135 (adopting findings), and the Subsequent Initial Study/Mitigated Negative Declaration (the "Subsequent Mitigated Negative Declaration"), which was recommended for certification by the Planning Board on September 22, 2014 by Resolution No. PB-PB-14-13, and certified with findings by the City Council on December 2, 2014, by Resolution No. ~~14135~~ (adopting the Subsequent Mitigated Negative Declaration and adopting a mitigation monitoring and reporting program).

b. **General Plan**. On December 2, 2014, following Planning Board review and recommendation, and after a duly noticed public hearing, the City Council, made findings that the Project was consistent with the City's General Plan (the "General Plan").

c. **Master Plan**. On December 16, 2014, following Planning Board review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. ~~3115~~, approved the Del Monte Project Master Plan (the "Master Plan") on its second reading.

d. **Density Bonus Application**. On December 2, 2014, following Planning Board review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. ~~3115~~, approved the density bonus application for the Project (the "Density Bonus Application") and authorized its execution.

e. **Certificate of Approval**. On June 5, 2014, after a duly noticed public hearing, the Historical Advisory Board, by Resolution No. 14-13, approved a Certificate of Approval for the Developer's proposed adaptive reuse of the Del Monte Warehouse (the "Certificate of Approval").

f. **Development Plan**. On September 22, 2014, after a duly noticed public hearing, the Planning Board, by Resolution No. PB-14-12, approved the Development Plan for subarea A of the Del Monte Warehouse Project (the "Warehouse Development Plan").

g. **Transportation Plan**. On November 10, 2014, after a duly noticed public hearing, the Planning Board, by Resolution No. PB-14-18, approved the Transportation Plan for the Project (the "Transportation Demand Management Plan" or "Transportation Plan").

h. **Design Review**. On September 22, 2014, after a duly noticed public hearing, the Planning Board, by Resolution No. PB-14-12, approved the design review for the Del Monte Warehouse (the "Warehouse Design Review").

i. **Development Agreement**. On December 16, 2014, following Planning Board review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. ~~3116~~, approved this Development Agreement and authorized its execution.

j. **Subsequent Approvals**. The Parties agree that in order to develop the Project (including the Public Benefits), the Developer may require development permits, and/or construction approvals other than those listed in Section 4 above, which may include, without limitation: development plans, conditional use permits, variances, subdivision approvals, street abandonments, design review approvals, demolition permits, infrastructure agreements, grading permits, building permits, right-of-way permits, lot line adjustments, site plans, sewer and water connection permits, certificates of occupancy, parcel maps, lot splits, landscaping plans, master sign programs, affordable

housing agreement, and encroachment permits (collectively, "Subsequent Approvals"). At such time as any Subsequent Approval applicable to the Project is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Development Agreement applicable to the Initial Project Approvals and shall be treated as a "Project Approval" under this Development Agreement.

5. **Public Benefits.** In consideration of, and in reliance on, City agreeing to the provisions of this Development Agreement, Developer will provide the following public benefits, some of which are over and above those dedications, conditions and exactions required by laws or regulations:

- a. Provide for the orderly development of the Property and the surrounding community.
- b. Construct the Clement Avenue Extension.
- c. Provide affordable units over and above City's minimum requirement set forth in the City's Inclusionary Housing Ordinance (Alameda Municipal Code Section 30-16), as permitted under the City's Density Bonus Ordinance (Alameda Municipal Code Section 30-17).
- d. Provide infrastructure improvements that will benefit the Property and the surrounding community.
- e. Preservation of the historic Del Monte building consistent with the United States Secretary of the Interior's Standards for Rehabilitation.
- f. Contribute to Jean Sweeney Open Space Park and associated recreational improvements and amenities that will benefit future property owners and the surrounding community.
- g. Strengthening and diversifying the economic base of the City and surrounding community by adding 30,000 gross square feet of new retail/commercial space that will provide jobs and economic development, as well as provide new amenities for City residents, including new shops, restaurants and services.
- h. Reducing the impact of the automobile and energy consumption by: (1) facilitating public transit opportunities; (2) providing a system of bikeways and pedestrian paths to facilitate access to the waterfront; and (3) implementing a Transportation Demand Management ("TDM") program that will reduce Project-related traffic and associated noise and air quality impacts.
- i. Providing adequate vehicular access to and within the Project without impeding access to existing areas of the City.

6. **Developer's Obligations.** The Developer shall comply with the requirements set forth in the Exhibits attached to this Development Agreement. In addition, Developer shall:

- a. **Jean Sweeney Open Space Park Contribution.** Provide a contribution of Two Million Dollars (\$2,000,000) (the "Jean Sweeney Contribution") in a combination of cash and construction related services towards the construction of the Jean Sweeney Open Space Park ("Jean Sweeney Park"), subject to the following terms and conditions:

- i. Soft Cost Contribution. Developer provides to the City Three Hundred Thousand Dollars (\$300,000) ("Soft Cost Contribution") by no later than thirty (30) days after the Effective Date, to be used by the City's Recreation and Park's Director exclusively to cover the cost of preparation of 100% construction drawings implementing the master plan approved by City Council for Jean Sweeney Park (the "Design Work"). The City shall promptly provide the Developer with copies of pending and/or paid invoices to allow Developer to track the expenditure of the Soft Cost Contribution.
- ii. Additional Soft Costs Contribution. Should the initial Soft Cost Contribution prove inadequate to cover the cost of the design work, the City may make a written request to the Developer for additional Soft Cost Contributions in increments of \$25,000 each ("Additional Soft Costs Contribution"). Each request will be accompanied by estimates for further design work and costs to justify the requested Additional Soft Cost Contribution. Developer shall provide City with such Additional Soft Cost Contribution within fifteen (15) days of the request.
- iii. Soft Cost Credit. Developer shall receive full credit for all Soft Cost Contributions, including Additional Soft Cost Contributions, against its Two Million Dollar obligation.
- iv. Construction Team Coordination. Developer will cause its general contractor, construction manager, appropriate design professionals and subcontractors ("Developer's Construction Team") to review the design drawings and construction drawings provided by the City and City's design team for the Jean Sweeney Park, solely for the purpose of identifying and discussing potential issues and problems regarding constructability ("Constructability Review"). Developer's Construction Team will keep account of its time spent on Constructability Review.
- v. Credit for Constructability Review. If Developer is selected to perform the Jean Sweeney Work, pursuant to Section 6.a.viii below, then Developer will not be entitled to credit for the time spent by Developer's Construction Team on Constructability Review or the resulting cost to Developer. However, if Developer is not selected to perform the Jean Sweeney Work, pursuant to Section 6.a.viii below, then Developer will be entitled to credit for the time spent by Developer's Construction Team on Constructability Review and the resulting cost incurred. In either case, Developer shall disclose to the City along with supporting documentation, the time spent to perform the Constructability Review and the resulting cost to Developer at the time Developer submits its Budget pursuant to Section 6.a.vii below. In addition, regardless of whether Developer is selected to perform the Jean Sweeney Work, City agrees to coordinate with Developer with respect to any new infrastructure connections affecting the Project and/or Jean Sweeney Park.
- vi. Accounting. Within fifteen (15) days after City's approval of the construction drawings and building permits for the Jean Sweeney Park, City's Recreation and Parks' representatives shall meet with Developer to confirm the total amount of remaining Jean Sweeney Contribution after subtracting the

expended Soft Cost Contribution. The remaining amount will be known as the "Construction Contribution".

vii. Budget The Developer will work on a line item budget ("Budget") stating what portion of the construction of Jean Sweeney Park (the "Jean Sweeney Work") can be completed with the available Construction Contribution. The Budget will take into account that: (x) if Developer is selected to perform the Jean Sweeney Work, it will be entitled to a fee equal to five percent (5%) of the Construction Contribution as a management fee; (y) the construction of Jean Sweeney Park is subject to the requirements of California Labor Code Section 1770 et seq. and Section 2-67 of the Alameda Municipal Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements; and (z) Jean Sweeney Park is being constructed in phases, as such this first phase needs to be completed in such a way as to protect the work until the next phase commences.

viii. Budget Review & Selection. The City shall review and approve or disapprove the proposed Budget in writing within thirty (30) days of its submission. If the Budget is disapproved, the City shall state the reasons for the disapproval and the City and Developer shall negotiate in good faith to resolve the issues which lead to the disapproval. Once the outstanding issue(s) is resolved, the City shall have fifteen (15) days to either: (a) approve the Budget in writing and have Developer perform the Jean Sweeney Work in accordance thereto; or (b) if City determines that the Jean Sweeney Work can be done at a lower cost by another contractor, elect to take the Construction Contribution in cash and have the Jean Sweeney Work performed by a general contractor of the City's choosing. If the City elects option (b) above, Developer shall provide to the City the Construction Contribution in full within fifteen (15) days of receipt of City's written notice of election.

ix. Construction. If selected, Developer shall commence the Jean Sweeney Work on City's behalf no later than the date of issuance of the first building permit for the Project. The Jean Sweeney Work may include any or all of the following services: civil engineering services, installation of utilities (including sewer, water, storm drains and electrical conduit), grading, landscaping, and other construction activities. All of the Jean Sweeney Work shall be conducted by Developer, if selected as the contractor, in accordance with City's Master Plan for the Jean Sweeney Park, when and as approved by City. Developer acknowledges and agrees that the Jean Sweeney Work is subject to the requirements of California Labor Code Section 1770 et seq. and Section 2-67 of the Alameda Municipal Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. Developer shall obtain, or cause its general contractor to obtain, as applicable, payment and performance bonds in a sum being not less than one hundred percent (100%) of the total amount of the construction contract for the Jean Sweeney Work with the City as a loss payee or named insured.

x. Quarterly Reports. From and after commencement of the Jean Sweeney Work, Developer shall submit quarterly reports to City detailing the work

performed during the previous quarter. The report shall be submitted to City within thirty (30) days after the end of each calendar quarter and shall include an accounting of the management fee due to Developer for the prior quarter, a summary of the work performed by any consultants or contractors retained by Developer, copies of all invoices for such consultants and contractors, and a statement from the Developer as to whether the cost for the quarter are within the approved Budget. The Developer shall promptly provide City with copies of supporting documentation as City may reasonably request to track and verify the expenditure of the Construction Contribution.

xi. Completion & Release. Upon final building inspection of the Jean Sweeney Work, and completion of the Jean Sweeney Work punchlist items to the City's reasonable satisfaction, Developer shall have no further obligation to fund any further improvements to Jean Sweeney Park.

xii. Additional Phases. The City anticipates that it will receive additional funding from sources other than the Developer to construct additional phases of the Jean Sweeney Park. However, the timing for receipt of those funds is uncertain. Should the City receive additional funds, City may request Developer amend the Budget to incorporate the additional funds ("Amended Budget") or prepare a new budget ("New Budget"). The Parties will then follow the same process outlined in Sections 6.a vi – 6.a x inclusive. However, prior to selection, Developer shall have the right to accept or decline the City's request to construct additional phases in its sole discretion.

b. Clement Extension. Construct, at no cost to the City of Alameda, the extension of Clement Avenue from Atlantic Street to Entrance Road including a new intersection and signal at Sherman, Clement, and Atlantic, and installation of stop signs at the following intersections: Buena Vista/Entrance Road and Clement/Entrance Road (the "Clement Extension"). The Clement Extension improvements are more specifically described in Exhibit C, attached. Developer shall obtain, or shall cause its general contractor to obtain, as applicable, payment and performance bonds in a sum being not less than one hundred percent (100%) of the total amount of the construction contract for the Clement Extension work with the City as a loss payee or named insured. The improvements shall be completed on the earlier of: (x) the issuance of the 250th certificate of occupancy for the Project or; (y) four (4) years from the Effective Date, provided however that the completion deadline shall be extended if necessary so that under no circumstances shall the period between the commencement date and the completion date for the Clement Extension improvements be less than one (1) year. Upon completion of the improvements, by quitclaim deed, Developer shall transfer fee title to the Clement Extension right of way, including the travel lanes, bike lanes, landscaping strips and sidewalks to the City of Alameda at no cost.

i. The Parties acknowledge that Wind River Systems currently owns a portion of the land that will be needed to complete the extension of Clement Avenue from Entrance Road to Atlantic Street, "Wind River Property". City further acknowledges that Developer has made and continues to make all commercially reasonable efforts to acquire the Wind River Property. In addition,

City has used and shall continue to use commercially reasonable efforts to assist Developer in acquiring the Wind River Property.

- ii. Developer shall pay when due the Acquisition Expenses (as described in Section 7.b. below) reasonably incurred by City in assisting Developer in acquiring the Wind River Property.
- iii. Developer is entitled to a fair share contribution from the Encinal Terminals developer for its proportional share of the cost of the Clement Extension improvements. The Developer will negotiate directly with the Encinal developer as to the amount of such contribution and timing of payment. The City will not be a party to that agreement. However, the City will collect the Signal Contribution from the adjacent Marina Cove II developer pursuant to Section 7.a. below.
- iv. Developer acknowledges and agrees that the construction of the Clement Extension is subject to the requirements of California Labor Code Section 1770 et seq and Section 2-67 of the Alameda Municipal Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements.
- v. The Parties acknowledge and agree that Developer shall establish a funding mechanism reasonably acceptable to the City's Public Works Director, in both form and revenue generating capacity (such as a Community Facilities District), to provide funding to the City for the maintenance of the Clement Extension. Developer is entitled to a fair share contribution from the Encinal Terminals developer for its proportional share of the cost of the Clement Extension maintenance. The Developer will negotiate directly with the Encinal developer as to the amount of such contribution and timing of payment. The City will not be a party to that agreement. It is understood and agreed that Developer will be responsible for the entire maintenance cost of the Clement Extension until such time as Developer enters into a binding agreement with the Encinal Terminal developer for its fair share contribution.

c. **Transit Demand Management Program.** The Developer shall implement a Planning Board approved Transportation Demand Management Program to provide and facilitate the use of alternative modes of transportation to minimize single occupancy vehicle trips and greenhouse gas emissions.

d. **Retail/Commercial Space** Provide for a minimum of 30,000 square feet of ground floor neighborhood-serving retail/commercial space within the Project, in accordance with the Master Plan. For purposes of this Development Agreement, the term "retail/commercial space" shall mean non-residential uses permitted or conditionally permitted by the Master Plan. Any variations or adjustments to this requirement may be approved pursuant to the public process established in the Master Plan.

e. **Beneficial Transfer Fee Agreement.** Execute a Beneficial Transfer Fee Agreement with the City of Alameda, in the form attached hereto as Exhibit D, providing that the City of Alameda shall receive one quarter percent (0.25%) of the sale price,

exclusive of broker's fees and closing costs, upon each sale of a residential unit within the Project other than the initial sale of a unit by the Developer. The Beneficial Transfer Fee agreement shall be executed concurrently with this Development Agreement, shall be recorded in the public records of the County of Alameda and shall be a covenant running with the land. The Beneficial Transfer Fee Agreement and the covenants contained therein shall remain in effect for a period of ninety-nine (99) years from the Effective Date at which time said covenants shall automatically terminate.

f. **Subdivision Improvement Agreement.** Prior to filing its final subdivision map, Developer and City shall execute a subdivision improvement agreement that is not inconsistent with this Development Agreement and that satisfies the requirements of California Government Code Sections 66462 and 66462.5(c).

g. **Affordable Housing.** The Developer shall be responsible for funding and constructing all fifty-five (55) of the affordable housing units as part of the Project. Prior to issuance of the first building permit for the Project, Developer shall submit for City Council's review and approval in its reasonable discretion, an Affordable Housing Agreement for the provision of fifty-five (55) affordable housing units, consistent with the requirements of the Master Plan and in a form acceptable to the City Attorney.

h. Failure of the Developer to timely comply with or implement the obligations in this Section 6 shall be deemed a Breach of this Development Agreement under Section 16.a.

7. **City of Alameda Obligations.** The City of Alameda ("City") shall:

a. **Traffic Signal Fair Share Collection.** Collect a fair share contribution for the cost of the new signals at Clement/Entrance, Buena Vista/Entrance, and Sherman/Atlantic/Clement from the adjacent Marina Cove II developer (the "Signal Contributions") within four (4) years of the Effective Date of this Development Agreement. The cost for the new signals shall be based on an estimate prepared by the engineer for Developer. The Signal Contribution from the adjacent Marina Cove II developer shall be based upon the actual cost of the new signals times the ratio of the number of residential units approved for construction at Marina Cove II as compared to the total number of residential units planned for Marina Cove II, the Project and Encinal Terminals.

b. **Wind River Property Acquisition.** Use commercially reasonable efforts to assist Developer in acquiring the Wind River Property. Developer shall pay to City (or at City's option, directly to third parties) the City's reasonable acquisition expenses in assisting the Developer in acquiring the Wind River Property. Acquisition Expenses include but are not necessarily limited to any of the following: all amounts paid to the property owner for acquisition of the Wind River Property, including any out-of-court settlement amount that may be higher than the appraisal amount; expert witness and consultant fees, including appraisers, incurred throughout the acquisition process; attorney's fees; court costs and filing fees; relocation costs as provided for in Government Code section 7260 et seq. and related regulations (the Relocation Assistance Act); any court awards including but not limited to compensation for the value of the

property taken, interest on the award, interest for immediate possession of the property taken, as well as payment of sanctions, if any, awarded to the owner of the property being taken (except to the extent such sanctions are based on the intentional bad faith or intentional misconduct of the City); court costs awarded to the owner or payable to the Court; and court costs, if any, awarded to the owner for abandonment or dismissal or all or any part of any condemnation action; recordation fees.

c. **Transfer of City Parcel.** The City Council, by ordinance at a public meeting, shall consider the transfer of the City Parcel by quitclaim deed to the Developer or another entity of its choosing at no costs and, if necessary, reserve unto itself a pre-existing (unrecorded) easement for electrical utility lines. The City acknowledges and agrees that the transfer of the Clement Extension to the City shall be the consideration for any transfer of the City Parcel to the Developer, that is approved by the City Council. The City acknowledges that the value of the Clement Extension is equal to or greater than the value of the City Parcel. Nothing in this section shall modify the Developer's obligation in Section 6.b. The closing on the transfer of the City Parcel shall take place within fifteen (15) days of the date City accepts the transfer of fee title to the Clement Extension. The foregoing notwithstanding, at the written request from the Developer, the City Council, by ordinance at a public hearing, shall consider granting an option in favor of the Alameda Housing Authority for the purpose of demonstrating site control, in connection with its tax credit application for the construction of affordable housing upon terms mutually agreeable to the City, the Developer and the Alameda Housing Authority.

d. **Infrastructure Financing.** Subject to Developer's compliance with all applicable laws, including, but not limited to, any required vote of affected property owners, and further subject to reimbursement of its costs by Developer, the City shall cooperate with the Developer in the establishment of a Community Facilities District, Municipal Services District or a similar financing mechanism should Developer, in its sole discretion, choose to establish such a district.

e. Failure of the City to timely comply with or implement the obligations in this Section 7 shall be deemed a Breach of this Development Agreement under Section 16.a.

8. **Development of the Property.**

a. **Vested Development Rights.** The Property is hereby made subject to the provisions of this Development Agreement. All development of or on the Property, or any portion thereof, shall be undertaken only in compliance with the Project Approvals, Applicable Law and the provisions of this Development Agreement. Developer shall have a vested right to develop the Property in accordance with the Project Approvals, Applicable Law and this Development Agreement. The Project shall be subject to all Subsequent Approvals (which, upon final approval, shall be deemed part of the Project Approvals hereunder).

b. **Applicable Law.** The rules, regulations, official policies, standards and specifications applicable to the development of the Property shall be those set forth in the Project Approvals and this Development Agreement, and with respect to matters not addressed by these documents, those laws, rules, regulations, official policies, standards

and specifications (including City ordinances and resolutions) as set forth below, to the extent not inconsistent with the Project Approvals, governing permitted uses, building locations, timing of construction, densities, design, heights, development impact fees and exactions in force and effect on the Effective Date (“Applicable Law”). Such laws include:

- i. The City’s General Plan and Planning and Zoning Code in effect on the Effective Date;
- ii. The approved Master Plan for the site approved by the City Council on December 16, 2014;
- iii. All other City policies, ordinances, resolutions, rules, regulations and standards applicable to development or use of the Property on the Effective Date, except that Developer shall:
 - (1) Comply with Building Code requirements in effect on a city-wide basis during the construction;
 - (2) Comply with changes in City laws, regulations, plans or policies applicable city-wide which are necessary to protect members of the public from a condition dangerous to their health or safety;
 - (3) Following any subsequent environmental review, comply with required mitigation measures and all Subsequent Project Approvals which are consistent with this Development Agreement.
 - (4) Comply with a change in City law, regulations, plans or policies which is/are:
 - A. Specifically mandated by state or federal law, or by any regional governmental agency that has legal authority over the City under state law or a joint powers agreement; or
 - B. A result of or in response to state or federal law, or regional agency action, made necessary in order for the City to avoid losing or not receiving substantial funding or other substantial public benefits or facilities that would be available to the City only if it makes such a change; or
 - C. Specifically mandated by, or necessary for compliance with or implementation of, the terms of any permit, entitlement or other authorization necessary for the development of the Property issued or granted to the City, County and/or Developer by any federal, state or regional agency.

c. **Processing Fees.** “Processing Fees” mean fees charged to the Project to cover the cost of City review of applications for any permit or other review by City departments. Applications for Project Approvals for the Project shall be charged the then-applicable Processing Fees to allow the City to recover its actual and reasonable costs. Notwithstanding anything to the contrary contained in this Development Agreement,

Developer shall not receive any protection from rate escalators or rate increases on Processing Fees.

d. **Impact Fees.** "Impact Fees" means monetary fees, exactions or impositions, other than taxes or assessments, whether established for or imposed upon the Project individually or as part of a class of projects, that are imposed by City on the Project in connection with any Project Approval (including Subsequent Approvals) for any purpose, including, without limitation, defraying all or a portion of the cost of public services and/or facilities construction, improvement, operation and maintenance attributable to the burden created by the Project. For purposes of this Agreement, the term "Impact Fees" shall not include impact fees imposed on the Project by the Alameda Unified School District, the State of California or any political subdivision of the State except the City.

i. Only the specific Impact Fees, (including the applicable inflator, if any) listed in Exhibit E of this Development Agreement shall apply to the Project. The base year for any Impact Fee inflator shall be 2014.

ii. Except as provided in Section 8.d.i above, no change to an Impact Fee resulting in an increase in dollar amounts charged to the Project by the City that is adopted after the Effective Date shall apply to the Project. No new Impact Fee not listed on Exhibit E shall apply to the Project during the Term of this Development Agreement.

iii. Developer retains all rights set forth in California Government Code § 66020. Nothing in this Development Agreement shall diminish or eliminate any of Developer's rights set forth in such section.

e. **Development Timing.** The Parties acknowledge that Developer cannot at this time predict when or the rate at which the phases of the Project will be developed or the order in which each phase will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand, interest rates, absorption, completion and other similar factors. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. The City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development prevailing over such parties' agreement, it is the Parties' desire to avoid that result by acknowledging that Developer shall have the vested right to develop the Project in such order, and at such rate and at such times, as Developer deems appropriate in the exercise of its business judgment, subject to the terms, requirements and conditions of the Project Approvals and this Development Agreement. Subject to the deadlines contained in this Development Agreement, Developer will use its best efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing Developer's business decision, to commence or to continue development, and to develop the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Development Agreement and the Project Approvals.

f. **Life of Project Approvals**. The term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Development Agreement or the term otherwise applicable to such Project Approvals, provided however, that the terms of use permits, design review, building permits and variances shall be the time period permitted by Applicable Law.

g. **Subsequent Project Approvals**. Developer and City acknowledge and agree that Developer intends to submit applications for Subsequent Project Approvals, as defined herein. In connection with any Subsequent Project Approval, the City shall conduct its review as set forth in the Master Plan and exercise its discretion in accordance with Applicable Law, the Project Approvals and as provided by this Development Agreement.

h. **Tentative Maps**. If any tentative map heretofore or hereafter approved in connection with development of the Property is a vesting tentative map under the Subdivision Map Act, and if this Development Agreement is determined by a final judgment to be invalid or unenforceable that insofar as it grants a vested right to Developer for development of the Project, then and to that extent all rights and protections afforded Developer under the laws and ordinances applicable to vesting tentative maps shall survive.

i. **Developer's Right to Rebuild**. City agrees that Developer may, subject to Section 8.c. above, renovate or rebuild portions of the Project at any time within the Term of this Development Agreement should it become necessary due to natural disaster or changes in seismic requirements. Such renovations or reconstruction shall be processed as a Subsequent Project Approval. Any such renovation or rebuilding shall be subject to all design, density and other limitations and requirements imposed by this Development Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

j. **No Conflicting City Enactments**. Except as and to the extent required by State or Federal law; or as may be reasonably necessary to comply with requirements of, and/or pass through rate and/or connection fee increases established by, other local governmental agencies ("Other Local Agency Compliance Fees"); or as otherwise provided in this Development Agreement, City shall not impose on the Project any ordinance, resolution, rule, regulation, standard, official policy, condition, or other measure (each, individually, a "City Law") that is in conflict with the Applicable Law, this Development Agreement or the Project Approvals or that reduces the development rights or assurances provided by this Development Agreement. Without limiting the generality of the foregoing, any City Law enacted or adopted after the Effective Date of this Development Agreement, shall be deemed to conflict with this Development Agreement or reduce the development rights or assurances provided hereby if it would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which applies to or affects the Project:

- i. Reduce the number of residential units permitted to be developed on the Property;

- ii. Reduce the square footage of commercial development permitted to be developed on the Property;
- iii. Change any land use designation or permitted use of the Property unless otherwise authorized by the Project Approvals;
- iv. Limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities (for example, water rights, water connections or sewage capacity rights, sewer connections, etc.) for the Project;
- v. Limit or control the location, configuration or size of lots, buildings, structures, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in or imposed by the Project Approvals, Applicable Law or this Development Agreement;
- vi. Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner, except as set forth in this Development Agreement, Applicable Law or the Project Approvals; or
- vii. Impose on the Project or Developer any fees or exactions other than those permitted by this Development Agreement, Applicable Law or the Project Approvals.

9. **Initiatives and Referenda** Except as required under Section 8.c., if any City Law is enacted or imposed by a citizen-sponsored initiative or referendum, which City Law would conflict with the Project Approvals, Applicable Law or this Development Agreement or reduce the development rights or assurances provided by this Development Agreement, such City Law shall not apply to the Property or Project; provided, however, the Parties acknowledge that City's approval of this Development Agreement is a legislative action subject to referendum. Without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, building permits or other entitlements to use that are approved or to be approved, issued or granted by City shall apply to the Property or Project. Developer agrees and understands that City does not have authority or jurisdiction over any other public agency's ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may affect the Project. City shall cooperate with Developer and, at Developer's expense, shall undertake such actions as may be necessary to ensure this Development Agreement remains in full force and effect. City, except to submit to vote of the electorate initiatives and referendums required by law to be placed on a ballot, shall not support, adopt or enact any City Law, or take any other action which would violate the express provisions or spirit and intent of this Development Agreement or the Project Approvals.

10. **Annual Review.** Developer shall notify the City in writing at least forty-five (45) days prior to the anniversary of the Effective Date requesting an annual review of the Development Agreement. The periodic review of the Development Agreement shall be made at least every twelve (12) months, consistent with Government Code section 65865.1 and Alameda Municipal Code Section 30-95.1. At least thirty (30) days prior to each anniversary of the Effective Date during the term of this Agreement, Developer shall submit a written report to City outlining its

efforts toward good faith compliance with the terms of this Agreement. The report shall specifically include but not be limited to the status of the: Jean Sweeney Contribution (Section 6.a), Clement Extension (Section 6.b), Transit Demand Management Program (Section 6.c), Retail/Commercial Space leasing (Section 6.d), execution of the Beneficial Transfer Fee Agreement (Section 6.e) and an Affordable Housing Agreement (Section 6.g). Once the Transportation Management Agency (TMA) is established pursuant to Section 6.c of this Agreement, the TMA's annual report shall satisfy the annual reporting requirement for the Transit Demand Management Program (Section 6.c).

11. **Amendments.** The Development Agreement may be amended by the Parties, upon mutual agreement, consistent with the procedures set forth in Government Code section 65868 and Alameda Municipal Code Section 30-94.3, including any amendments to it. Except as may otherwise be required by law or court order, all amendments to this Development Agreement, whether approved by the City Council or the City Manager, shall: (i) be in writing; (ii) approved by the City Council in its sole discretion, by ordinance, at a public meeting or alternatively approved by the City Manager pursuant to Section 11.a below; (iii) signed by both Parties; and (iv) entitled "Development Agreement - Del Monte Warehouse Project, Amendment N" where "N" is the next number in order.

a. **Ministerial Amendments.** Without further action by the City Council, the City Manager shall have the authority, but not the obligation, to take the following action in his or her sole discretion:

- i. Extend or adjust the deadline for the City or Developer to complete any obligation under this Development Agreement for up to one (1) year upon any terms or conditions he/she deems appropriate using his/her reasonable discretion, except extend the Term of this Development Agreement;
- ii. Amend this Development Agreement as necessary to conform to any amendments or modifications to the Master Plan or any other Project Approvals approved by the Planning Commission and/or City Council;
- iii. Amend Section 14 only to this Development Agreement as necessary to comply with the requirements of a Mortgagee but only to the extent necessary for Developer to secure needed financing; and so long as such amendments do not materially expose the City to additional risk of liability or subject City to any monetary obligations or damages; and
- iv. Consent, on behalf of the City, to a Transfer pursuant to Section 13 herein and to amend this Development Agreement to correctly identify the new developer.

b. Nothing in this Section shall be construed as to require the City Manager to exercise his/her discretion or to prevent the City Manager from seeking City Council review and approval of an amendment that might otherwise fall within the City Manager's authority.

12. **Other Government Permits** City shall cooperate with Developer, to the extent appropriate and as permitted by law, in Developer's efforts to obtain, as may be required, permits and approvals from other governmental or quasi-governmental entities.

13. **Transfer** No sale, transfer or assignment of all or a portion of the Property, or creation of a joint venture or partnership, shall require the amendment of this Development Agreement, provided that such sale, transfer or assignment is completed in conformance with the following requirements:

a. **Right to Assign** Because of the necessity to coordinate development of the entirety of the Property pursuant to the Master Plan, particularly with respect to the provision of on- and off-site public improvements and public services, certain restrictions on the right of Developer to assign or transfer its interest under this Development Agreement with respect to the Property, or any portion thereof, are necessary in order to assure the achievement of the goals, objectives and public benefits of the Master Plan and this Development Agreement. Developer agrees to and accepts the restrictions set forth in this Section 13 as reasonable and as a material inducement to City to enter into this Development Agreement. For purposes of this Section 13, a change in the identity of the initial managing member of the Developer, or the initial managing member of Developer, (including the sale or transfer, in the aggregate, of the controlling stock or interest in said managing member) shall be deemed a transfer by Developer subject to the provisions of this Section. Developer shall have the right to sell, transfer, ground lease or assign the Property in whole or in part (provided that no such partial transfer shall violate the provisions of the Subdivision Map Act) to any person, partnership, joint venture, firm, company or corporation (any of the foregoing, an "Assignee") subject to the prior written consent of City; provided that Developer may assign its rights and obligations under this Development Agreement without the consent of City to any corporation, limited liability company, partnership or other entity which is controlling of, controlled by, or under common control with the Developer, and "control," for purposes of this definition, means effective management and control of the other entity, subject only to major events requiring the consent or approval of the other owners of such entity ("Affiliated Party"). City's consent shall not be unreasonably withheld, delayed or conditioned, and City shall consent if the Assignee reasonably demonstrates to City that it is able to perform the obligations of Developer under this Development Agreement. Assignee shall succeed to the rights, duties and obligations of Developer only with respect to the parcel or parcels of all or a portion of the Property so purchased, transferred, ground leased or assigned, and Developer shall continue to be obligated under this Development Agreement with respect to all portions of the Property retained by Developer, and with respect to the dedication and installation of all infrastructure improvements to be provided by Developer, pursuant to the Project Approvals.

i. The sale, transfer, lease or assignment of any right or interest under this Development Agreement shall be made only together with the sale, transfer, ground lease or assignment of all or a part of the Property. Concurrently with any such sale, transfer, ground lease or assignment, Developer shall (i) notify City in writing of such sale, transfer or ground lease; and (ii) Developer and Assignee shall provide a written assignment and assumption agreement in form reasonably

acceptable to the City Attorney pursuant to which Assignee shall assume and succeed to the rights, duties and obligations of Developer with respect to the parcel or parcels of all or a portion of the Property so purchased, transferred, ground leased or assigned.

ii. Subject to City's written consent as provided in Section 13, City, upon request of Developer or Assignee, and following compliance with the notification provisions above, shall provide Assignee with a certificate of compliance, stating that this Development Agreement remains valid and in full force and effect and is binding upon City, Developer and the Assignee as of the last Annual Review pursuant to the provisions of Section 10, except that if City knows of any non-compliance, City shall not be required to issue a certificate of compliance.

b. **Release of Transferring Developer.** Except with respect to a permitted transfer and assignment under Section 13.a. to an Affiliated Party, notwithstanding any sale, transfer or assignment of all or a portion of the Property, Developer shall continue to be obligated under this Development Agreement as to all or the portion of the Property so transferred unless City is satisfied the Assignee is fully able to comply with Developer's obligations under this Development Agreement (both financially and otherwise) and Developer is given a release in writing.

c. **Partial Transfer.** Notwithstanding any other provision hereof to the contrary, if Developer only transfers a portion of the Property, then Developer shall continue to be obligated under this Development Agreement with respect to the balance of the Property not so transferred.

14. **Mortgagee Protection**

a. **Mortgagee Protection.** This Development Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the Development Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Development Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

b. **Mortgagee Not Obligated.** Notwithstanding the provisions of Section 14.a above, no Mortgagee shall have any obligation or duty under this Development Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with the Project Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by the Development Agreement, or otherwise under the Project Approvals.

c. **Notice of Default to Mortgagee.** If City receives a notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then City agrees to use its best efforts to deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed an event of default, and if City makes a determination of noncompliance hereunder, City shall likewise use its best efforts to serve notice of such noncompliance on such Mortgagee concurrently with service thereon on Developer. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City's notice. If a Mortgagee shall be required to obtain possession in order to cure any default, then vis-à-vis the Mortgagee, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure but in no event may this period exceed one hundred twenty (120) days from the City's notice.

15. **Estoppel Certificate.** Within twenty (20) days of a written request, either Party shall execute an estoppel certificate in writing that, to the knowledge of the responding Party as of the last Annual Review: (a) this Development Agreement is in full force and effect and is a binding obligation of the Parties, (b) this Development Agreement has not been amended or modified either orally or in writing, or if amended, identifying the amendments, and (c) the requesting Party is not in Breach in the performance of its obligations under this Development Agreement, or if in Breach or Default, describe the nature and amount of any such Breach or Defaults.

16. **Remedies for Default.** If a Party is in default under this Development Agreement, it may pursue one or more of the following courses of action, after thirty (30) days' prior written notice to the other Party:

a. **Breach.** Subject to extensions of time under Section 14.c. or by mutual consent in writing, the failure or delay by either Party to perform any term or provision of this Development Agreement shall constitute a breach of this Development Agreement. In the event of alleged breach of any terms or conditions of this Development Agreement, the Party alleging such breach shall give the other Party notice in writing specifying the nature of the breach and the manner in which said breach or default may be satisfactorily cured, and the Party in breach shall have thirty (30) days following such notice ("Cure Period") to cure such breach, except that in the event of a breach of an obligation to make a payment, the Party in breach shall have ten (10) days to cure the breach. If the breach is of a type that cannot be cured within thirty (30) days, the breaching Party shall, within a thirty (30) day period following notice from the non-breaching Party, notify the non-breaching Party of the time it will take to cure such breach which shall be a reasonable period under the circumstances ("Extended Cure Period"); commence to cure such breach; and be proceeding diligently to cure such breach. Subject to the provisions of Section 14 c., the Extended Cure Period shall in no event exceed one hundred twenty (120) days unless otherwise agreed by the Parties. During the Cure Period or Extended Cure Period, the Party charged shall not be considered in default for purposes of termination or institution of legal proceedings; but the City's right to refuse to issue a permit or Subsequent Project Approval, under Section 16.c., shall not be limited by this

provision. The failure of any Party to give notice of any breach shall not be deemed to be a waiver of that Party's right to allege that breach or any other breach at any other time.

b. **Default** If the breaching Party has not cured such breach within the Cure Period or the Extended Cure Period, if any, such Party shall be in default ("Default"), and the non-breaching Party, at its option, may terminate the Development Agreement or institute legal proceedings pursuant to this Development Agreement and shall have such remedies as are set forth in Sections 16.c and 16.d. below.

c. **Withholding of Permits**. In the event of a Default by Developer, or following notice of breach by Developer and during the Cure Period or Extended Cure Period, upon a finding by the City Manager that Developer is in serious and substantial breach, City shall have the right to refuse to issue any permits or other approvals to which Developer would otherwise have been entitled pursuant to this Development Agreement. This provision is in addition to and shall not limit any actions that City may take to enforce the conditions of the Project Approvals.

d. **Remedies**.

i. **Termination by Developer**. In the event of a Default by City, the Developer shall have the right to terminate this Development Agreement upon giving forty-five (45) days prior written notice to City of its intent to terminate.

ii. **Termination by City**. In the event of a Default by Developer, the City, through its City Manager, shall have the right to terminate this Development Agreement upon giving forty-five (45) days prior written notice to Developer:

- (1) If the City Manager elects to terminate, then within said 45 days, Developer shall have the right to ask the City Council (during public comment at a City Council meeting) for a hearing to reconsider the termination decision ("Reconsideration Hearing").
- (2) The City Council may accept, reject or refuse to respond to a Reconsideration Hearing request in its sole and absolute discretion. If the City Council grants the request for a Reconsideration Hearing, then the matter shall be placed on the City Council's agenda as soon as practicable but no sooner than fourteen (14) days from the date the request is granted to allow the Developer time to prepare its presentation. If and only if the Reconsideration Hearing is scheduled for (or continued to) a date which is after the effective date of the termination notice, then the effective date of the termination notice is automatically extended until ten (10) days after the Reconsideration Hearing date.
- (3) The Developer and City staff may, but neither is obligated to, provide the City Clerk with written materials to be included in the agenda packet for the City Council's review prior to the Reconsideration Hearing. Such materials, if any, must be submitted in time to comply with the City's Sunshine Ordinance and will become part of the public record.

- (4) At the Reconsideration Hearing, Developer shall have the right to present verbal testimony and written materials to show that: (i) it has cured the Default(s); (ii) that it will cure the Default(s) in the near future if given more time; (iii) that it is willing to offer the City alternative or additional consideration to offset the Default(s); or (iv) that the Development Agreement should not be terminated despite the Default(s).
 - (5) At the Reconsideration Hearing, City staff may, at its option, present evidence in rebuttal.
 - (6) After consideration of the materials presented by the Developer and City staff, if any, and following public comment, the City Council may affirm or rescind the termination decision upon any terms or conditions it deems appropriate using its reasonable discretion.
 - (7) If the City Council conditionally rescinds the termination decision, then Developer shall have three (3) business days to accept or reject in writing, the conditions stated by the City Council. If the Developer accepts all of the conditions, then the Parties will work together diligently and in good faith to amend this Development Agreement or any other documents necessary to effectuate the new agreement. If Developer rejects, in whole or in part, the conditions set by the City Council or fails to respond in writing within three (3) business days, then the City Manager's notice of termination remains in full force and effect and this Development Agreement shall terminate pursuant thereto.
 - (8) Termination of this Development Agreement shall be subject to the Mortgagee Protection provisions of Section 14 of the Development Agreement
- iii. **Additional Developer Remedies.** City and Developer agree that in the event of Default by City, the Parties intend that the primary remedy for Developer shall be specific performance of this Development Agreement. Developer may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies (excluding monetary damages) consistent with the purpose of this Development Agreement. Any such legal action shall be brought in the Superior Court for Alameda County, California. The Parties further acknowledge that the City would not have entered into this Development Agreement had it been exposed to damage claims from Developer for any breach thereof. As such, the Parties agree that in no event shall Developer be entitled to recover monetary damages (including but not limited to actual, consequential, punitive or special damages) against City for breach of this Development Agreement. The foregoing notwithstanding, if Developer is the prevailing party in an action against the City to enforce or defend the provisions of this Development Agreement, then Developer shall be entitled to attorney's fees and costs pursuant to Section 18 below.

iv. **Additional City Remedies.** City and Developer agree that in the event of Default by Developer, the City, in addition to any other rights or remedies, may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies (including monetary damages) consistent with the purpose of this Development Agreement. Any such legal action shall be brought in the Superior Court for Alameda County, California. If City issues an Approval pursuant to this Development Agreement in reliance upon a specified condition being satisfied by Developer in the future, and if Developer then fails to satisfy such condition, City shall be entitled to specific performance for the purpose of causing Developer to satisfy such condition.

17. **Indemnification.** Developer agrees to defend, indemnify, release and hold harmless the City and its elected and appointed officials and employees from any litigation, claim, action or court proceeding brought against any of the foregoing individuals or entities (the "Indemnified Parties"), the purpose of which is to attack, set aside, void or annul this Development Agreement on any grounds, other than a challenge to the Beneficial Transfer Fee Agreement. This indemnification shall include, without limitation, damages, costs, expenses, court awarded attorney fees or expert witness fees that may be asserted or incurred by the Indemnified Parties, arising out of or in connection with the approval or enforcement of this Development Agreement. City shall retain the right to approve counsel retained by Developer as well as any and all settlements proposed by Developer, which approval shall not be unreasonably withheld.

18. **Attorney's Fees.** If legal action is brought by one of the Parties to enforce or defend a provision of this Development Agreement, then the prevailing Party is entitled to its reasonable attorney's fees, expert witness fees, and court costs

19. **Third Party Legal Action; Attorney's Fees.** If the City chooses to defend any third party claim or suit challenging any action taken by the City with regard to any procedure or aspect of the City's approval of the development of the Project, including the environmental review process, the Developer agrees to reimburse the City for attorney's fees, expert witness fees, and related costs as the City may incur in connection with its retention of outside counsel, and for any award of damages, court costs or fees against the City. City has the right to choose and retain such legal counsel as the City deems appropriate.

20. **Provisions that Survive Termination of this Development Agreement.** It is expressly agreed by the Parties that the following provisions survive the termination or expiration of this Development Agreement:

Section 16 – Remedies for Default

Section 17 – Indemnification

Section 18 – Attorney's Fees, and

Section 19 – Third Party Legal Action; Attorney's Fees

21. **Severability.** If any term or provision of this Development Agreement (including the Beneficial Transfer Fee Agreement provision) or the application of any term or provision of this

Development Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Development Agreement, or the application of this Development Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

22. **Recordation: Binding Effect.** This Development Agreement shall be recorded in the office of the Alameda County Recorder and shall be binding upon and inure to the benefit of successors in interest to the Parties. Where there is more than one Developer, the obligations are joint and several.

23. **Successors and Assigns.** Subject to the provisions of Section 13 relating to Transfer, the terms, covenants and conditions contained in this Development Agreement shall bind and inure to the benefit of City, Developer and their respective successors and assigns; provided, however, that the City shall have no obligation under this Development Agreement to, nor shall any benefit of this Development Agreement accrue to, any unapproved successor or assign of Developer where City approval of a successor or assign is required by this Development Agreement.

24. **Cooperative Drafting.** This Development Agreement has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the Development Agreement reviewed and revised by legal counsel of their own choosing. No Party shall be considered the drafter of this Development Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Development Agreement.

25. **Integration.** This Development Agreement consists of 25 pages and 5 exhibits which constitute in full, the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Development Agreement shall be in writing and signed by the appropriate authorities of City and the Developer.

26. **No Third Party Beneficiaries.** There are no third party beneficiaries to this Development Agreement.

27. **Prevailing Wages.** If required by State law and Alameda Municipal Code Section 2-67, Developer agrees to comply with California Labor Code Section 1770 et seq regarding the payment prevailing wages, the training of apprentices and compliance with other applicable requirements for any work on the Project.

28. **Notices.** The address of each party for the purpose of all notices permitted or required by this Development Agreement is as follows:

To City:	City of Alameda
	Alameda City Hall, Rm 320
	2263 Santa Clara Avenue
	Alameda, CA 94501
	Attn: City Manager

With a copy to: City of Alameda
Alameda City Hall, Rm 280
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney

To Developer: TL Partners I, LP
12667 Alcosta Blvd., Suite 170
San Ramon, CA 95583
Attn: James L. Meek

With a copy to: Buchalter Nemer, A Professional Corporation
55 Second Street, Suite 1700
San Francisco, CA 94105-3493
Attn: Alicia Guerra

The written address of either party set forth above may be changed by written notice given not less than five (5) days prior to the date such change is to be in effect. All notices under this Development Agreement shall be in writing, shall be properly addressed and shall be sent by personal delivery, United States mail (registered, certified, or Express Mail, return receipt requested and postage prepaid), or by overnight courier delivery service. All such notices shall be considered delivered: (i) if personally delivered, on the date of delivery; (ii) if sent by United States mail in the manner prescribed above, on the date shown on the return receipt for acceptance or rejection; or (iii) if sent by overnight courier delivery service, on the date of delivery or attempted delivery as shown by the written delivery record of such service.

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IN WITNESS WHEREOF, the parties have signed this Development Agreement on the dates indicated below.

DEVELOPER

CITY OF ALAMEDA

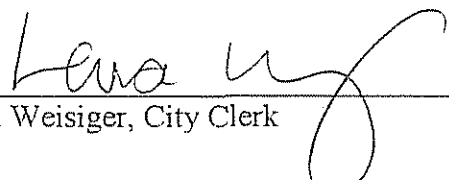
TL PARTNERS I, LP,
a California limited partnership

By: TL Management, Inc.
Its: General Partner


By: 
James L. Meek, Director of Land
(Notary Acknowledgment Required)

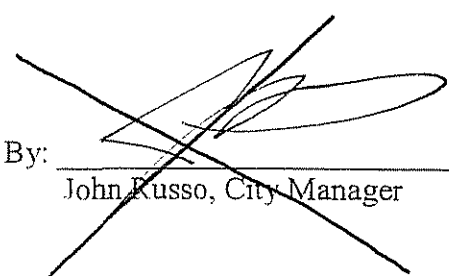
Date: 12/17/2014

Attest:


Lara Weisiger, City Clerk

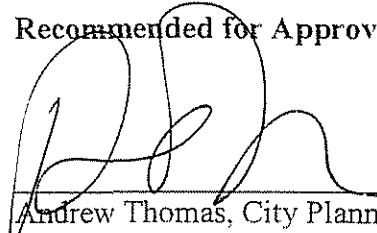
Approved as to Form:

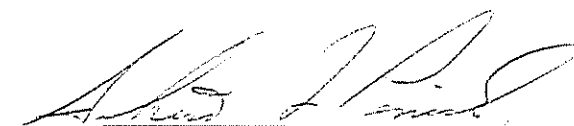

Farimah F. Brown 1-7-15
Senior Assistant City Attorney

By: 
John Russo, City Manager

Date: 8 Jan 2015

Recommended for Approval:


Andrew Thomas, City Planner


Andrico Q. Penick 1/7/15
Assistant City Attorney

Authorized by City Council Ordinance No. 3116.

Exhibits:

- A Del Monte Parcel – Legal Description
- B City Parcel – Site Map
- C Clement Extension Improvements
- D Beneficial Transfer Fee Agreement
- E List of Impact Fees

IN WITNESS WHEREOF, the parties have signed this Development Agreement on the dates indicated below.

DEVELOPER

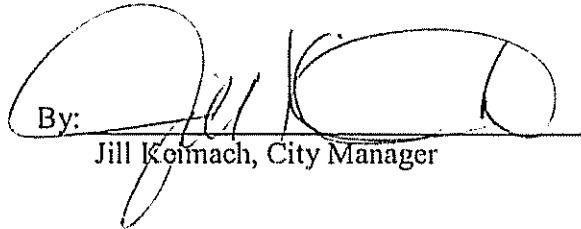
CITY OF ALAMEDA

TL PARTNERS I, LP,
a California limited partnership

By: TL Management, Inc.
Its: General Partner

SIGNED IN COUNTERPART

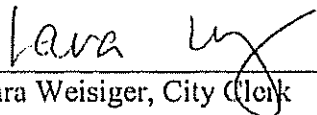
By: _____
James L. Meek, Director of Land
(Notary Acknowledgment Required)

By:  _____
Jill Keimach, City Manager


Date: _____

Date: 5/16/16

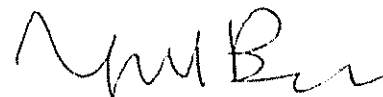
Attest:

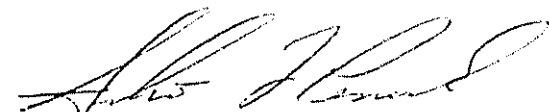
 _____
Lara Weisiger, City Clerk

Recommended for Approval:

 _____
Andrew Thomas, City Planner

Approved as to Form:

 _____
Farimah F. Brown
Senior Assistant City Attorney

 _____
Andrico Q. Penick
Assistant City Attorney

Authorized by City Council Ordinance No. 3116

Exhibits:

- A Del Monte Parcel – Legal Description
- B City Parcel – Site Map
- C Clement Extension Improvements
- D Beneficial Transfer Fee Agreement
- E List of Impact Fees

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)

County of Alameda)

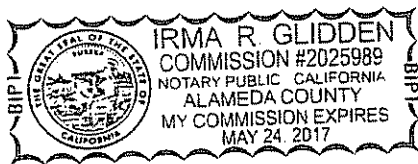
On December 17, 2014 before me, Irma R. Glidden, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared James L. Meek
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies); and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature Irma R. Glidden
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

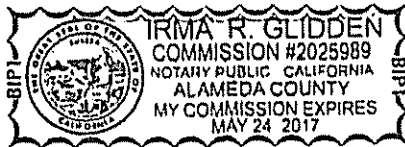
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Alameda)
On May 16, 2016 before me, Irma R. Glidden, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Jill Keimach
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature

Irma R. Glidden
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Legal Description – Del Monte Warehouse

Real property in the City of Alameda , County of Alameda, State of California, described as follows:

PARCEL ONE:

PARCEL C, AS SHOWN ON TRACT 7170, MARINE COVE, FILED MARCH 07, 2002, IN MAP BOOK 263, PAGES 52 THROUGH 62, INCLUSIVE, ALAMEDA COUNTY RECORDS

PARCEL TWO:

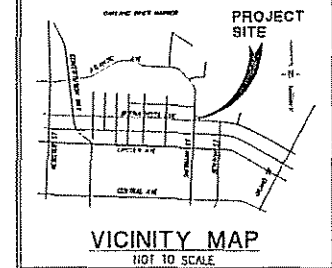
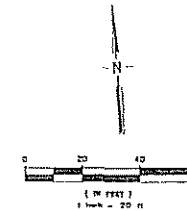
A NON-EXCLUSIVE EASEMENT, APPURTENANT TO PARCEL ONE, ABOVE, FOR THE INGRESS AND EGRESS UPON THE TERMS AND CONDITIONS SET FORTH IN THE INSTRUMENT ENTITLED "GRANT OF ACCESS EASEMENT", RECORDED OCTOBER 24, 1997, AS SERIES NO. 97282552, ALAMEDA COUNTY RECORDS, OVER THE FOLLOWING DESCRIBED LANDS:

ALL THAT REAL PROPERTY SITUATE IN THE CITY OF ALAMEDA, STATE OF CALIFORNIA, BEING THE NORTHERLY PORTION OF THE PARCEL DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED JUNE 06, 1996, AS SERIES NO. 96-136982 OF OFFICIAL RECORDS, IN THE OFFICE OF THE RECORDER OF THE COUNTY OF ALAMEDA, TOGETHER WITH THE SOUTHERLY PORTION OF THE PARCEL DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED JUNE 06, 1996 AS SERIES NO. 96-136980 OF OFFICIAL RECORDS IN THE OFFICE OF THE RECORDER OF THE COUNTY OF ALAMEDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHEASTERLY CORNER OF THE PARCEL DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED AS SERIES NO. 96-136980; THENCE SOUTH 7° 14' 18" WEST, A DISTANCE OF 24.06 FEET; THENCE NORTH 80° 48' 36" WEST, A DISTANCE OF 47.84 FEET; THENCE NORTH 80° 43' 03" WEST, A DISTANCE OF 119.82 FEET; THENCE NORTH 80° 34' 01" WEST, A DISTANCE OF 72.37 FEET; THENCE NORTH 9° 25' 59" EAST, A DISTANCE OF 24.43 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL; THENCE NORTH 9° 25' 59" EAST, A DISTANCE OF 8.38 FEET, THENCE SOUTH 80° 43' 03" EAST, A DISTANCE OF 238.77 FEET TO A POINT ON THE MOST EASTERLY LINE OF SAID PARCEL; THENCE ALONG SAID EASTERLY LINE SOUTH 7° 14' 18" WEST, A DISTANCE OF 8.88 FEET TO THE POINT OF BEGINNING

APN: 072-0383-004

CITY OF ALAMEDA, A MUNICIPAL CORPORATION			
PER FIRST AMERICAN TITLE COMPANY		ORDER NUMBER: 0131-61925a	DATED: OCTOBER 1, 2013
#	PURPOSE	DOCUMENT #	FLOTTED
4	ROADWAY, PUBLIC UTILITY EASEMENT	BOOK 9225, PAGE 12 O.R.	NO

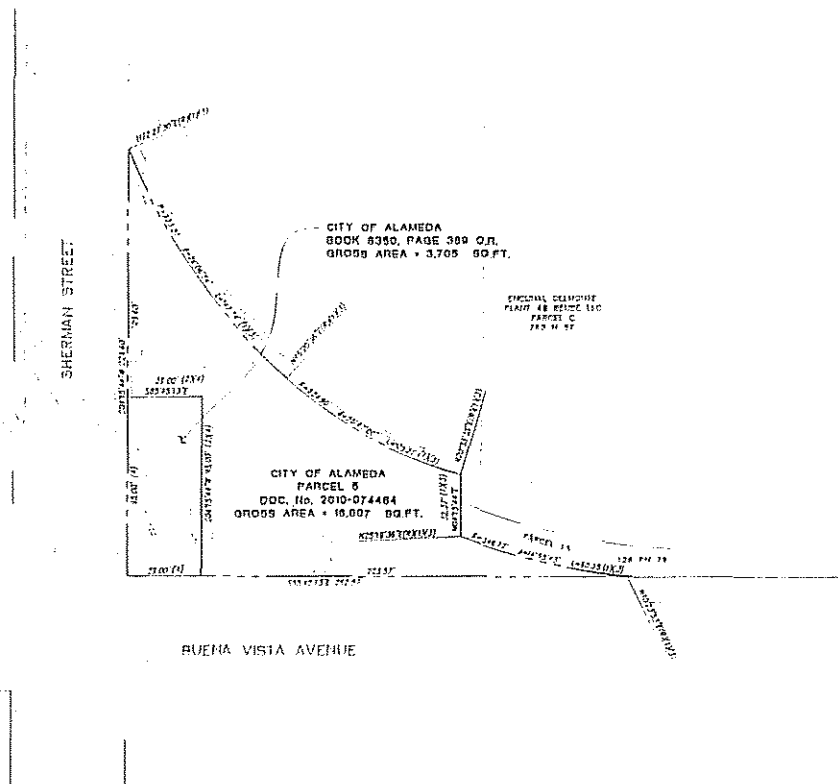


1. TITLE EXCEPTION: THE LOCATION OF THE EASEMENT CANNOT BE DETERMINED FROM RECORD INFORMATION

2. COMBINED GROSS AREA = 20,512+ SQ.FT.

3. TOPOGRAPHIC BACKGROUND SHOWN ON MAP WAS PROVIDED BY CITY OF ALAMEDA AND PREPARED BY OTHERS

(1) PARCEL MAP NO. 2938 (138 PM 76)
(2) GRANT DEED TO CITY OF ALAMEDA, PER DOCUMENT NUMBER 2010-07446
(3) TRACT MAP 2170 - MARINA COVE (263 M 52)
(4) GRANT DEED TO CITY OF ALAMEDA, PER (BOOK 8360, PAGE 393)



-----	BOUNDARY LINE
-----	ADJACENT PROPERTY LINES
-----	LOT LINE
EX	EXISTING
SQ.FT.	SQUARE FEET
O.R.	OFFICIAL RECORDS
(R)	RADIAL

RECORD BOUNDARY
1301 AND 1401 BUENA VISTA AVENUE
CITY OF ALAMEDA, ALAMEDA COUNTY,
CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4150 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94589
PHONE: (925) 271-8100 FAX: (925) 271-8270

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City Attorney
City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501

**NOTICE TO ESCROW HOLDERS: THIS AGREEMENT REQUIRES YOU
TO PAY A BENEFICIAL TRANSFER FEE TO THE CITY OF ALAMEDA FROM
THE PROCEEDS OF SALES OF CONDOMINIUMS**

**BENEFICIAL TRANSFER FEE AGREEMENT
(DEL MONTE WAREHOUSE CONDOMINIUM PROJECT)**

This BENEFICIAL TRANSFER FEE AGREEMENT (this "Agreement") is entered into on January ____, 2015 ("Effective Date"), between the City of Alameda, a municipal corporation, ("City") and TL Partners I, LP, a California limited partnership ("Developer") regarding the Del Monte Warehouse Project. The City and the Developer are sometimes referred to collectively as the "Parties" and either individually as a "Party."

RECITALS

This Agreement is based on the following facts, understandings and intentions of City and Developer:

A. The Developer is the owner of approximately 11.06 acres of real property located at the northeast corner of the intersection of Sherman Street and Buena Vista Avenue and commonly known as the Del Monte Warehouse, with an address of 1501 Buena Vista Avenue, City of Alameda, County of Alameda (APN 072-0383-004), as more specifically described in Exhibit A, attached hereto ("Covered Property").

B. Developer proposes to develop the Covered Property into a transit-oriented destination, comprised of residential mixed use with up to 414 housing units and 30,000 square feet of commercial space, consistent with the Master Plan approved on December 16, 2014 via Ordinance No. _____

C. Pursuant to Government Code Section 65864 and Alameda Municipal Code Chapter XXX, Article VII, Code Sections 30-91 thru 30-95, the City and Developer entered into a development agreement dated January ____, 2015 ("Development Agreement"). The Development Agreement requires, among other things, that the Developer enter into this Beneficial Transfer Fee Agreement with the City and record it as a covenant that runs with the land upon each Condominium and Single Family Dwelling, if any, on the Covered Property

D. The Covered Property is located across the street from Little John Park and within a quarter of a mile from a soon to be constructed Jean Sweeney Park. Both Little John Park and Jean Sweeney Park are owned by the City (collectively, the "City Parks"). The Owners and their visitors, guests and invitees will benefit from and enjoy the use of these City Parks.

E. The Benefit Fee, payable as Owners purchase Condominiums or Single Family Dwellings, will be used by the City exclusively to pay for the construction, operations, programming, maintenance, support, repair, capital replacement, capital reserves and operating reserves of the City Parks. Due to the City Parks' proximity to the Covered Property and their use by Owners, the City Parks enhance the Owner's property value and their enjoyment of their Condominiums or Single Family Dwellings.

F. Capitalized terms used in this Agreement are defined in Section 19 of this Agreement, unless otherwise defined herein.

AGREEMENT

NOW THEREFORE, for mutual and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Developer hereby agree as follows:

1. **Benefit Fee.**

Upon each Transfer, other than the initial sale of a unit by the Developer, City shall be paid a fee equal to the Benefit Fee Amount (each such fee a "Benefit Fee") by Owner on or before the closing or effective date of the Transfer. Each Owner, by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay a Benefit Fee to City on account of the Transfer of the Condominium or Single Family Dwelling owned by the Owner. The Benefit Fee, together with late charges, interest, attorneys' fees, court costs, and other costs and expenses of collection, shall be a lien and charge upon the Condominium or Single Family Dwelling being Transferred.

2. **Obligation for Payment.**

The transferor and transferee in each Transfer are obligated to pay to City the Benefit Fee on or before the closing or effective date of the Transfer. The obligation to pay the Benefit Fee for each Transfer is a joint and several obligation of the transferor and the transferee in each transaction and is not an obligation of any other Owner of a Condominium or Single Family Dwelling subject to this Agreement or any homeowners association for such Condominiums and/or Single Family Dwelling. The transferor and transferee in each transaction may, as a matter between themselves, allocate the obligation to pay the Benefit Fee in any manner they so choose.

3. **Payment by Escrow Holder.**

(a) The transferor and transferee shall, and hereby do, irrevocably instruct any Escrow Holder holding funds for a Transfer to pay the Benefit Fee to City, at such place and in such manner as City may instruct from time to time, from the proceeds of the Transfer at the

close of escrow; provided, however, the failure of the Escrow Holder to do so shall not relieve the transferor or transferee of the obligation to pay the Benefit Fee. The transferor and transferee shall execute all documents reasonably requested by the Escrow Holder to confirm this instruction and effectuate such payment on or before the close of escrow.

(b) In addition, Developer shall place in escrow, with any agreement by which it Transfers a Condominium or Single Family Dwelling, escrow instructions which specifically state, among other things, that the Escrow Holder shall pay the Benefit Fee to City out of the proceeds of the sale at the closing. City is hereby authorized as a third party beneficiary of any such escrow to submit a demand into escrow for payment of the Benefit Fee, which demand shall include: (i) the amount of the Benefit Fee that is due or the formula for calculating the Benefit Fee, and (ii) a statement that the Benefit Fee is due on or before close of escrow for the Transfer.

**BY ACQUIRING TITLE TO A CONDOMINIUM, EACH
OWNER OF A CONDOMINIUM HEREBY IRREVOCABLY
INSTRUCTS ANY ESCROW HOLDER HOLDING FUNDS
FOR THE TRANSFER OF THE CONDOMINIUM TO PAY
THE BENEFIT FEE TO THE CITY OF ALAMEDA FROM
THE PROCEEDS OF SALE AS SET FORTH HEREIN**

4. Information to Be Provided to City.

At least three (3) business days prior to the closing or effective date of the Transfer, the transferor, transferee or Escrow Holder, whichever party will transmit the Benefit Fee to City, shall provide adequate information to enable City to confirm that the amount of the Benefit Fee to be paid upon close of escrow has been correctly calculated, which information shall include but is not necessarily limited to: (i) the name and address of the transferor; (ii) the name and address of the transferee; (iii) an identification (by address and APN number) of the Condominium or Single Family Dwelling being Transferred; (iv) the Purchase Price, exclusive of closing costs and fees; (v) the amount of the Benefit Fee that is due and the formula for calculating same; (vi) the closing or effective date of the Transfer; (vii) the name, mailing address, email address and phone number of the escrow officer for the Transfer; and (viii) the name of the Escrow Holder.

5. Partial Reconveyance of Lien to Be Provided by City.

Upon written request by the transferor, transferee or Escrow Holder, whichever party will transmit the Benefit Fee to City, the City shall submit to the Escrow Officer, a Partial Reconveyance of Lien which shall state: (i) that based upon the information provided to City, the Benefit Fee has been properly calculated; and (ii) that upon receipt of the Benefit Fee in the proper amount, the City irrevocably waives and partially reconveys its lien for subject Transfer but that City retains its lien rights as to all future Transfers.

6. Late Charges and Interest.

The Benefit Fee shall be deemed delinquent if not paid within ten (10) days after the closing or effective date of the Transfer. If the Benefit Fee is not paid within ten (10) days after the closing or effective date of the Transfer, a late charge equal to five percent (5%) of the Benefit Fee shall be payable to City in addition to the Benefit Fee and any other sums provided for herein. The late charge represents a fair and reasonable estimate of processing, accounting and other costs and expenses that City will incur by reason of late payment of the Benefit Fee, the exact amount of which is extremely difficult and impracticable to ascertain. In addition to the late charge, a Benefit Fee not paid within thirty (30) days after the closing or effective date of the Transfer shall bear interest from such closing or effective date until paid at the lesser of ten percent (10%) per annum or the maximum rate allowed by law.

7. Remedies.

City shall be entitled to any and all rights and remedies available at law or equity in order to collect the Benefit Fees and all other sums due to City hereunder, including but not limited to specific performance and rights of lien.

8. Enforcement by Lien.

(a) Creation of Lien. Without limiting any other right or remedy, there is hereby created a claim of lien, with power of sale, on each and every Condominium and Single Family Dwelling, if any, on the Covered Property to secure prompt and faithful performance of each Owner's obligations under this Agreement for the payment to City of the Benefit Fees, together with late charges, interest, attorneys' fees, court costs and other costs and expenses of collection which may be paid or incurred by City in connection therewith.

(b) Recordation of Lien. At any time after delinquency, City may file and record in the Office of the Alameda County Recorder a notice of default and claim of lien against the Condominium or Single Family Dwelling of a defaulting Owner. Such notice of default and claim of lien shall be executed and acknowledged by any officer of City and shall contain substantially the following information: (1) the name of the defaulting Owner; (2) a legal description of the Condominium or Single Family Dwelling; (3) the total amount of the delinquency, including late charges, interest, attorneys' fees, court costs and other costs and expenses of collection; (4) a statement that the notice of default and claim of lien is made by City pursuant to this Agreement; and (5) a statement that a lien is claimed and will be foreclosed against the Condominium or Single Family Dwelling, as applicable. City shall mail a copy of the notice of default and claim of lien to the Owner at the address of the Condominium or Single Family Dwelling. Upon such recordation of a duly executed notice of default and claim of lien and mailing a copy thereof to the Owner, the lien claimed therein shall immediately attach and become effective.

(c) Foreclosure of Lien. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment. If the lien is foreclosed in the manner provided by law for the foreclosure of a deed of

trust by power of sale, the trustee for all purposes related thereto (including, but not limited to, the taking of all actions which would ordinarily be required of a trustee under a foreclosure of a deed of trust) shall be a title company or other neutral third party with prior trustee experience appointed by City. City shall have the power to bid at any foreclosure sale, trustee's sale or judgment sale, and to purchase, acquire, lease, hold, mortgage and convey any Condominium or Single Family Dwelling acquired at such sale, subject to the provisions of this Agreement

(d) Proceeds of Sale The proceeds of any foreclosure, trustee's or judgment sale provided for in this Agreement shall first be paid to discharge costs of sale and other recoverable fees, costs and expenses and then the unpaid Benefit Fees and all late charges and interest thereon, and the balance, subject to the rights of any Mortgagee, shall be paid to the defaulting Owner. The purchaser at any such sale shall obtain title to the Condominium or Single Family Dwelling free from the sums or performance claimed but otherwise subject to the provisions of this Agreement; provided, no such sale or transfer shall relieve such Condominium or Single Family Dwelling or the purchaser thereof from liability for Benefit Fees or other payments or performance thereafter becoming due. All sums due and owing hereunder but still unpaid following any such sale or transfer shall remain the obligation of the transferor and transferee obligated to pay them.

(e) Cure of Default Upon the timely curing of any default for which a notice of default and claim of lien was filed by City, City shall record an appropriate release of such lien in the Office of the County Recorder of Alameda County.

9. Covenant Running with the Land.

(a) Developer and City hereby declare that the Covered Property will be owned, held, and transferred subject to the reservations, rights, covenants, conditions and equitable servitudes contained in this Agreement. This Agreement is made pursuant to Section 1468 of the California Civil Code and is intended by the parties hereto to contain covenants running with the land and/or equitable servitudes binding on the Covered Property and the City Parks. The reservations, rights, covenants, conditions and equitable servitudes set forth in this Agreement shall: (i) run with and burden the Covered Property and run with and benefit the City Parks in perpetuity or until such earlier time as the Little John Park and the Jean Sweeney Park have been permanently closed; (ii) be binding upon all Owners and other Persons having or acquiring any interest in a Condominium or Single Family Dwelling on the Covered Property or any part thereof and their heirs, successors and assigns; (iii) inure to the benefit of and be binding upon Developer and City, and their respective successors and assigns, the Covered Property and the City Parks; and (iv) may be enforced by Developer, City and each Owner and their respective heirs, successors and assigns

(b) Developer and City hereby acknowledge and agree that: (a) the obligation to pay a Benefit Fee upon the Transfer of any Condominium or Single Family Dwelling, if any, in which Developer is not the transferor in such Transfer is not a personal covenant or obligation of Developer, and (b) every act restrained or required by any covenant contained in this Agreement relates to the use, repair, maintenance or improvement of the Covered Property and/or the City Parks within the meaning of Section 1468 of the California Civil Code

10. Use of Benefit Fee By City

The Benefit Fee will be used by the City exclusively to pay for the construction, operations, programming, maintenance, support, repair, capital replacement, capital reserves and operating reserves of the City Parks.

11. Acknowledgement of Benefit.

Each Owner who acquires a Condominium or Single Family Dwelling, by such acquisition, agrees to and acknowledges that the existence of the City Parks in close proximity to the Covered Property will benefit the Condominiums and Single Family Dwelling and enhance their value and Owner's enjoyment.

12. Mortgagees.

(a) Rights of Beneficiaries Nothing in this Agreement nor any amendment to or breach of this Agreement defeats or renders invalid the rights of the beneficiary under any Mortgage recorded in the Official Records of Alameda County encumbering any Condominium or Single Family Dwelling made in good faith and for value, provided that after the foreclosure or a transfer in lieu of foreclosure of any such Mortgage, such Condominium or Single Family Dwelling will remain subject to this Agreement.

(b) Effect of Foreclosure No foreclosure of a Mortgage on a Condominium or Single Family Dwelling or a transfer in lieu of foreclosure shall impair or otherwise affect City's right to pursue payment of any Benefit Fee due in connection with the Transfer of such Condominium or Single Family Dwelling from the transferor or a transferee obligated to pay it. No foreclosure or transfer in lieu thereof shall relieve such Condominium or Single Family Dwelling or the purchaser thereof from liability for any Benefit Fee thereafter becoming due or from the lien therefor.

13. Federal Housing Finance Agency - Final Rule.

(a) Under 12 C.F.R. § 1228.1, this Agreement is not a "private transfer fee" because the Benefit Fee is "imposed by or payable to the local government," i.e. the City of Alameda, a municipal corporation. Thus, the Federal Housing Finance Agency's Final Rule does not prohibit Fannie Mae, Freddie Mac and the Federal Home Loan Bank from buying mortgage loans on Condominiums or Single Family Dwellings encumbered by this Agreement.

(b) Further, the City of Alameda may not assign any of its rights under this Agreement except to a successor local government agency and the Benefit Fee directly benefits the Covered Property as described in Section 17 below. Thus, this Agreement is not of the type the Federal Housing Finance Agency sought to restrict through its Final Rule. (12 C.F.R. § 1228 *et seq.*)

14. Jurisdiction, Venue and Law.

Any Dispute under this Agreement shall be resolved by the Superior Court, subject to the rights of City to non-judicially foreclose a lien. Venue for any action shall be Alameda.

County, California. This Agreement shall be construed in accordance with the laws of the State of California

15. Amendment.

(a) City has the right to unilaterally amend this Agreement for the following reasons: (i) correct typographical errors, (ii) conform this Agreement to law, lender guidelines or California Department of Real Estate requirements, (iii) reduce the Benefit Fee, or (iv) terminate this Agreement.

(b) Developer has the right, after prior written notice and written consent of the City, to unilaterally amend this Agreement to conform this Agreement to law or California Department of Real Estate requirements.

16. Notices.

The address of City, Developer and Owner for the purpose of all notices permitted or required by this Agreement is as follows:

To City: City of Alameda
Alameda City Hall, Rm 320
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Manager

With a copy to: City of Alameda
Alameda City Hall, Rm 280
2263 Santa Clara Avenue
Alameda, CA 94501
Attn: City Attorney

To Developer: TL Partners I, LP
12667 Alcosta Blvd., Suite 170
San Ramon, CA 95583
Attn: James L. Meek

With a copy to: Buchalter Nemer, a Professional Corporation
55 Second Street, Suite 1700
San Francisco, CA 94105-3493
Attn: Alicia Guerra

To Owner: The address of the Condominium or Single Family Dwelling
owned by Owner

The address of either City or Developer set forth above may be changed by written notice given not less than five (5) days prior to the date such change is to be in effect. All notices under this Agreement shall be in writing, shall be properly addressed and shall be sent by personal delivery, United States mail (registered, certified, or Express Mail, return receipt requested and

postage prepaid), or by overnight courier delivery service. All such notices shall be considered delivered: (i) if personally delivered, on the date of delivery; (ii) if sent by United States mail in the manner prescribed above, on the date shown on the return receipt for acceptance or rejection; or (iii) if sent by overnight courier delivery service, on the date of delivery or attempted delivery as shown by the written delivery record of such service.

17. Assignment.

City may not assign all or any portion of its rights or delegate all or any portion of its duties and obligations under this Agreement except to another governmental entity which is the legal successor to City

18. Attorneys' Fees.

The prevailing party in any Dispute shall be entitled to recover its reasonable attorneys' fees and court costs from the other party.

19. Definitions.

As used herein, the following terms shall have the following meanings:

(a) "Affiliate" means any entity described by California Corporations Code section 150

(b) "Agreement" means this Beneficial Transfer Fee Agreement

(c) "Benefit Fee Amount" or "Benefit Fee" shall mean the amount equal to one quarter of one percent (0.25%) of the Purchase Price of each Condominium or Single Family Dwelling on the initial sale of a Condominium or Single Family Dwelling to an Owner other than Developer and in each subsequent Transfer

(d) "Condominium" means a residential structure constituting an estate in real property as defined in California Civil Code Sections 783 and 1351(1)

(e) "Dispute" means any dispute arising under or related to this Agreement, including the amount, obligation to pay and any other issue concerning a Benefit Fee under this Agreement

(f) "Escrow Holder" means any title company, trust company, or other Person serving as an escrow holder or agent for the Transfer of a Condominium or Single Family Dwelling.

(g) "First Mortgagee" means a Mortgage with lien priority over all other Mortgages for such Condominium or Single Family Dwelling

(h) "Mortgage" means any mortgage or deed of trust or other conveyance of one or more Condominiums or Single Family Dwellings on the Covered Property to secure performance of an obligation, which will be reconveyed upon completion of such performance.

(i) "Owner" means the Person or Persons, including Developer, holding record fee title to any Condominium or Single Family Dwelling on the Covered Property, but excludes a security interest held by a mortgagee or beneficiary of a Mortgage.

(j) "Person" means a natural individual or any entity with the legal right to hold title to real property.

(k) "Purchase Price" means the total purchase price or other consideration given by the transferee to the transferor in a transaction resulting in a Transfer, including but not limited to, the sum of actual cash paid, the fair market value of services performed or real and personal property delivered or conveyed in exchange for the Transfer, and the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or remaining unpaid on the property at the time of the Transfer, but excluding any third-party cost or charge incurred by the transferor or the transferee in connection with the transaction.

(l) "Single Family Dwelling" means an attached or detached building or structure designed and intended for occupancy by one (1) family and containing one (1) but not more than one (1) kitchen

(m) "Transfer" and "Transferred" means the sale, transfer, conveyance or exchange of a Condominium or Single Family Dwelling by an Owner to a transferee; provided, however, **none** of the following transactions shall constitute a "Transfer" under this Agreement:

i. A transfer of an interest in a Condominium or Single Family Dwelling to secure the performance of an obligation, such as a Mortgage or a lien, which interest will be reconveyed upon the completion of such performance

ii. A transfer of a Condominium or Single Family Dwelling resulting from a foreclosure (by judicial foreclosure or trustee's sale) by the beneficiary of a First Mortgage, or by an association (as defined in Civil Code section 1351(a)), or by an association described in a Public Report issued by the California Department of Real Estate for the Covered Property or any part thereof, or a transfer in lieu thereof.

iii. A transfer of a Condominium or Single Family Dwelling by an Owner to a revocable intervivos trust that is not a change of ownership under California Revenue and Taxation Code Section 62(d).

iv. Any interspousal transfer (as defined in California Revenue and Taxation Section Code 63) or transfer between parents and any of their children (as defined in California Revenue and Taxation Code Section 63.1)

v. Any other transfer that is not a change of ownership under the California Revenue and Taxation Code.

vi. Any transfer of real property to a public agency, entity or district, or a utility service provider.

vii. Any transfer of real property to an association (defined in Section 1351(a) of the California Civil Code) as common area (defined in Section 1351(b) of the California Civil Code).

viii. The rental or lease of a Condominium or Single Family Dwelling.

ix. Any transfer by an accommodation party as a part of a tax- deferred exchange under the Internal Revenue Code, if the transaction involves more than one Transfer solely because the Condominium or Single Family Dwelling is held/owned for an interim period (not to exceed 180 days) by the accommodation party (such that only one Transfer shall be deemed to have occurred and only one Benefit Fee shall be payable in connection therewith, and the accommodation party shall not have any liability for payment of such Benefit Fee).

20. Counterparts.

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

21. Waiver.

No right or remedy will be waived unless the waiver is in writing and signed by the party claimed to have made the waiver. One waiver will not be interpreted as a continuing waiver.

22. Authority to Execute Agreement.

Each individual signing this Agreement on behalf of a party hereto represents and warrants that he or she is duly authorized to sign this Agreement on behalf of such party and that such party is bound by his or her signature.

23. Severability.

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect to the greatest extent permitted by law unless amended or modified by mutual consent of the parties.

24. Interpretation.

The Recitals set forth above and the exhibit attached hereto are incorporated herein by this reference. Except for the definitions in Section 19, the headings and captions of the paragraphs of this Agreement are for convenience and reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

25. Cooperative Drafting.

This Development Agreement has been drafted through a cooperative effort of both Parties, and both Parties have had an opportunity to have the Development Agreement reviewed

and revised by legal counsel of their own choosing. No Party shall be considered the drafter of this Development Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Development Agreement.

IN WITNESS WHEREOF, the parties have signed this Development Agreement on the dates indicated below.

DEVELOPER

TL PARTNERS I, LP,
a California limited partnership

By: TL Management, Inc
Its: General Partner

Date: _____ By: _____

J. Timothy Lewis, President

(Notary Acknowledgment Required)

CITY OF ALAMEDA

Date: _____ By: _____

John Russo, City Manager

Authorized by City Council Ordinance No. _____

Attest:

Approved as to Form:

City Clerk

Assistant City Attorney

EXHIBIT A

DESCRIPTION OF COVERED PROPERTY

EHIBIT B
DESCRIPTION OF CITY PARKS

Exhibit E

Exhibit E: Impact Fees to Be Collected at Building Permit

<u>Impact Fee Name</u>	<u>Alameda Municipal Code</u>
Improvement Tax	AMC Section 3-62
Affordable Housing Fee	AMC Section 27-1
Development Impact Fee	AMC Section 27-3
Sewer Connection Fee	AMC Section 18.3