RECORDING REQUESTED BY:)
)
City of Brisbane)
)
WHEN RECORDED, RETURN TO:)
City Clerk)
City of Brisbane)
50 Park Place)
Brisbane, CA 94005)
)

Space above this line for Recorder's use only

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT, dated for reference purposes _____, 2008 is entered into by and between the CITY OF BRISBANE, a municipal corporation ("City"), and HCP LS BRISBANE, LLC, a Delaware limited liability company ("Developer"). The City and Developer are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS:

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties:

A. The Brisbane City Council has adopted Resolution No. 82-48 establishing procedures and requirements for the consideration of development agreements pursuant to California Government Code Section 65864 *et seq.* (the "Development Agreement Procedures").

B. Developer owns approximately 23 acres of vacant land located easterly of Shoreline Court and southerly of Sierra Point Parkway, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Numbers 007-165-080, 007-165-090 and 007-165-100, and more particularly described in **Exhibit "A"** attached hereto and made a part hereof ("the Property"). The Director of Community Development has obtained the opinion of the City Attorney that Developer's legal or equitable ownership interest in the Property satisfies the conditions of Section 104 of the Development Agreement Procedures.

C. The Property constitutes a part of the Redevelopment Area commonly known as Sierra Point and is subject to the provisions of the Combined Site and Architectural Design Guidelines (the "Design Guidelines"), being a master plan for development of the entire Sierra Point area.

D. Developer has applied for City land use entitlements to allow the construction of a proposed biotech complex encompassing approximately 540,185 square

feet of research and development space in 5 separate buildings, 1,801 parking spaces, including a 5-level parking structure (surface plus 4-levels) with approximately 961 spaces, and up to approximately 15,000 square feet of retail space to be included as part of the parking structure ("the Project"). The configuration of the Project is generally shown on the Site Plan attached hereto as **Exhibit "B"** and made a part hereof.

E. The applications for land use entitlements submitted by Developer include an amendment to the Sierra Point Commercial/Retail/Office (SP-C/R/O) General Plan designation for the Property and amendment to the zoning regulations for the Sierra Point Commercial (SP-CRO) district to allow research and development uses, including limited animal testing, and amendment to the Sierra Point Design Guidelines along with issuance of a design permit for the Project. Such applications are designated as GP-2-05, RZ-2-05, and DP-6-05, respectively. Developer has also submitted an application for this Development Agreement, identified as DA-1-07, and an application for a parking modification use permit, identified as UP-12-07 ("Parking Use Permit UP-12-07").

F. Pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code §§ 21000-21178, an Environmental Impact Report was prepared (SCH #2006012024) ("EIR") which analyzes all of the environmental impacts associated with the Project. The EIR concluded that all of the impacts associated with the Project were either less than significant or could be mitigated to a level of insignificance, with the exception of certain cumulative traffic impacts.

G. Development of the Project in a comprehensive and orderly fashion as contemplated in this Agreement will result in substantial public benefits to the City and the present and future owners and occupants of property within Sierra Point, including the construction or contribution toward the cost of public improvements and facilities.

H. In exchange for the foregoing benefits to City, Developer desires to receive City's assurance that it may proceed with the Project in accordance with the Governing Ordinances, subject to the terms and conditions contained in this Agreement and the conditions of approval for Design Permit DP-6-05, and other discretionary approvals for the Project. This Agreement is intended to grant Developer a vested right to develop the Project as provided herein, to assure Developer that no exactions, conditions, costs, or requirements to construct public improvements beyond those listed in this Agreement shall be imposed by City in connection with the development of the Project, and to provide City with certain binding assurances with respect to the nature, scope and timing of such development and related public improvements.

I. For these reasons, City has determined that the Project is a development for which a development agreement is appropriate in order to achieve the goals and objectives of City's land use planning policies. Notice of City's intention to consider adoption of this Agreement has been given in accordance with the requirements of California Government Code Section 65867.

J. On _____, after consideration of the staff report and all other documentary and oral evidence submitted at a duly noticed public hearing, the Brisbane Planning Commission adopted: (1) Resolution No. _____, recommending to the City Council that the EIR be certified and the related Mitigation Monitoring Program be

approved; (2) Resolution No. _____, recommending to the City Council that General Plan Amendment GP-2-05 be approved; (3) Resolution No. _____, recommending to the City Council that Zoning Ordinance amendment RZ-2-05 be adopted; (4) Resolution No. _____, recommending to the City Council that the Design Guidelines be modified; that Design Permit DP-6-05 be granted; and that Parking Use Permit UP-12-07 be granted.

K. On _____, after consideration of the staff report and all other documentary and oral evidence submitted at a duly noticed public hearing pursuant to the Development Agreement Procedures and state law, the Planning Commission found and determined that this Agreement is consistent with the objectives, policies, land uses and programs specified in the Brisbane General Plan, as amended by GP-2-05; is compatible with the uses authorized in and the regulations prescribed for the SP-CRO Sierra Point Commercial District, as amended by RZ-2-05; is in conformity with and will promote public convenience, general welfare and good land use practices; will not adversely affect the orderly development of property or the preservation of property values within the City and will promote the same; and will promote and encourage the development of the Project by providing a greater degree of requisite certainty with respect thereto. The Planning Commission thereupon adopted Resolution No. _____, recommending to the City Council that Ordinance No.____ approving this Development Agreement be adopted.

L. On _____, the City Council held a duly noticed public hearing on the Developer's applications for land use entitlements and following the conclusion thereof, the City Council took the following actions:

(1) Adopted Resolution No. _____ to certify the EIR, making the findings required for approval of a Statement of Overriding Considerations with respect to the unmitigated impact identified therein, and approving the Mitigation Monitoring Program;

(2) Adopted Resolution No. _____ amending the General Plan to permit research and development uses per GP-2-05.

(3) Adopted Ordinance No. _____ amending the text of the zoning regulations for the Sierra Point Commercial District to permit research and development uses, including limited animal testing, per RZ-2-05;

(4) Adopted Resolution No. _____ granting a Design Permit for the Project, amending the Design Guidelines to reflect the Project as approved per DP-6-05, and granting Parking Use Permit UP-12-07.

M. On _____, the City Council held a duly noticed public hearing on this Agreement, and following the conclusion thereof, the City Council accepted the findings and recommendations of the Planning Commission and determined that this Agreement is consistent with the General Plan, as amended by GP-2-05. Accordingly, on _____, the City Council introduced the Enacting Ordinance and thereafter, on _____, the City Council adopted the Enacting Ordinance approving this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

SECTION 1. DEFINITIONS.

As used herein, the following capitalized terms shall have the meanings set forth below, unless the context requires otherwise:

1.1. Agreement means this Development Agreement.

1.2 Conditions of Approval means the conditions of approval attached to and made a part of Design Permit DP-6-05 granted for the Project.

1.3. Construction Standards means the building, mechanical, plumbing, electrical, fire, health, safety, and environmental codes, standards and specifications adopted by the City or otherwise made applicable to construction projects within the City under any federal, state or local statute, ordinance, rule or regulation in effect at any time during the term of this Agreement, including those Construction Standards adopted after the Effective Date of this Agreement. The term "Construction Standards" specifically includes compliance with the City's Green Building Ordinance, as set forth in Chapter 15.80 in Title 15 of the Brisbane Municipal Code.

1.4. Enacting Ordinance means Ordinance No. _____, adopted by City Council on _____, approving this Agreement. This Agreement shall constitute a part of the Enacting Ordinance as if incorporated therein in full.

1.5. Event of Default means the failure or unreasonable delay by either party to perform any term, provision or condition of this Agreement as set forth in Section 12.1 of this Agreement.

1.6. Exactions means all requirements that might be imposed by City as a condition of developing the Project as of the date of this Agreement, including fees or other monetary payments, requirements for acquisition, dedication or reservation of land, obligations to construct on-site or off-site public and private improvements called for in connection with the development of the Project under this Agreement, the Project Approvals, and the Governing Ordinances, whether such requirements constitute conditions of the Design Permit, mitigation measures in connection with environmental review of the Project, or impositions made under other Governing Ordinances or in order to make a Project Approval consistent with City's General Plan. It is understood and agreed between Developer and City that City shall not impose upon Developer any additional exactions, contributions or dedications beyond those imposed under this Development Agreement.

1.7. Existing Approvals for the Project consist of the following:

(a) The EIR and its Mitigation Monitoring Program;

(b) Design Guideline Amendment and Design Permit DP-6-05 and the Conditions of Approval attached thereto;

(c) Parking Use Permit UP-12-07.

1.8. Governing Ordinances means the Ordinances in effect as of the Effective Date specified in Section 2.1 of this Agreement.

1.9. Laws means the constitutions and laws of the State of California and the United States and any codes, statutes or executive mandates or any court decision, state, federal or local thereunder.

1.10. Land Use Term means the term of this Agreement as specified in Section 2.2 below.

1.11. Ordinances means the ordinances, resolutions, and official policies of the City, governing the permitted uses of land and the density, intensity, rate and timing of development, including the City's General Plan (as amended by GP-2-05), Zoning Ordinance (as amended by RZ-02-05, and the Design Guidelines for Sierra Point (as amended by DG-1-05). Ordinances do not include Construction Standards.

1.12. Project means the improvements to the Project Site and associated off-site improvements, as generally described in Paragraph D of the Recitals to this Agreement and depicted in the development plans either on file or to be filed by Developer, subject to any modifications or amendments that may be agreed upon by City and Developer pursuant to Section 8 of this Agreement or required or permitted by the Governing Ordinances or the Construction Standards.

1.13. Project Approvals refers collectively to the Existing Approvals and the Subsequent Project Approvals (as defined in Section 3.4).

1.14. Project Site means the real property described in **Exhibit "A"** attached to this Agreement.

1.15. Subsequent Project Approvals means all Project Approvals that may be issued by City after the Effective Date of this Agreement, as defined in Section 3.4.

SECTION 2. EFFECTIVE DATE; LAND USE TERM.

2.1. Effective Date; Recordation. This Agreement shall be dated and the obligations of Developer and City hereunder shall be effective as of _____ ("Effective Date"). City and Developer shall execute and acknowledge this Agreement, and

thereafter the City Clerk shall cause this Agreement, including all Exhibits hereto, to be recorded in the Official Records of the County of San Mateo, State of California.

2.2. Land Use Term. The term of this Agreement shall commence on the Effective Date and shall expire ten (10) years thereafter, subject to the provisions of Sections 6 and 8.2 of this Agreement and Section II.F of Exhibit C of this Agreement, unless sooner terminated or extended as hereinafter provided. Notwithstanding the provisions of Section 17.42.060 of the Brisbane Zoning Ordinance, Design Permit DP-06-05 shall remain in full force and effect during the Land Use Term of this Agreement and any extensions thereof.

SECTION 3. GENERAL DEVELOPMENT OF THE PROJECT.

3.1. Vested Right to Develop the Project. Developer shall have the vested right to develop the Project on the Project Site. City shall have the right to regulate development and use of the Project Site in accordance with the terms and conditions of this Agreement, the Governing Ordinances, the Conditions of Approval, and the applicable Construction Standards. This Agreement, the Governing Ordinances, the Conditions of Approval, and the applicable Construction Standards shall control the overall design, development and construction of the Project, all on-site and off-site improvements and the issuance of Subsequent Project Approvals.

3.2. Construction and Occupancy of Retail Space.

(a) **Timing.** Developer shall construct retail space shell in accordance with the plans submitted by DES Architects + Engineers entitled Design Review Board Submittal, as approved per the Design Permit, in conjunction with construction of the parking garage, which shall occur prior to receiving a Certificate of Occupancy for the third building of the Project.

(b) **Construction Standards.** Developer shall construct retail space shell with sufficient plumbing~~,~~ infrastructure, site utilities, and ventilation to accommodate tenant improvements to restaurant uses in accordance with standard construction practice for comparable retail space shell (taking into consideration the leasing proposal as a whole for any prospective retail tenant, including other elements of such leasing proposal, such as tenant allowances, rent and other lease terms).

(c) **Permitted Uses.** The primary objective of the retail space is to activate and support the adjacent planned public space at Sierra Point, with the secondary objective to support other businesses within Sierra Point. Such uses retail would stimulate public activity in the area by taking advantage of the site's proximity to to amenities including the Bay, Marina, public open spaces and Bay trail, and/or providing a range of goods or services that would attract the public at various times of day. Targeted retail uses would include (but not be limited to) restaurants, specialty and/or convenience retail shops, galleries, health clubs, coffee shops, and cafes. Recognizing that not all uses permitted in the SP-CRO Sierra Point Commercial District would achieve the above-stated objectives, during the term of this Agreement, any proposed use within the Retail Space that would otherwise

be classified as a permitted use under the zoning regulations for the SP-CRO District, shall be subject to review and approval by the Community Development Director to verify compliance with the objectives stated herein (which approval shall not be unreasonably withheld or delayed), in addition to other standards set forth in Title 17 of the Brisbane Municipal Code. The Developer shall have the right to appeal the determination of the Community Development Director to the Planning Commission.

(d) **Retail Space Leasing.** It is in the interest of both the City and Developer to ensure that leasing of the retail space occurs in an expeditious manner. In furtherance of this objective, Developer agrees to use reasonable efforts in pursuing leasing opportunities for this retail space with the goal of securing tenants for the retail space as soon as reasonably practicable after the retail space is constructed. The City Redevelopment Agency is willing to assist in leasing efforts upon mutual consent of the Developer and Agency.

(e) **Retail Parking.** The parties acknowledge that the minimum retail parking requirements that must be provided under Section 17.34.010 of the Brisbane Municipal Code is 1 parking space for each 300 square feet of gross floor area. The City agrees that per the parking variance granted under Parking Use Permit UP-12-07, Developer shall not be required to provide for such parking on the Project Site and the parking requirements shall be satisfied by the availability of nearby public parking spaces. The City acknowledges that Developer will not be responsible for any maintenance, costs or liabilities associated with such public parking based upon such spaces being used to satisfy the parking requirements for the retail space.

(f) **Lot Line Adjustment.** The City acknowledges that in order for the Project Site to encompass the entire retail shell space (including all required setbacks relating to the retail shell space), the Developer will require a transfer of certain property that is currently owned by the City and a lot line adjustment of the Project Site (the "Retail Lot Line Adjustment"). The City agrees to transfer fee title of such property to the Developer, and to complete the Retail Lot Line Adjustment as soon as reasonably possible following the execution of this Agreement but in no event later than Developer's commencement of construction of the retail shell space.

3.3. Construction of Public Improvements.

(a) **Description of Work.** Developer, at its sole cost and expense, shall construct or install all of the on-site and off-site public improvements as set forth in **Exhibit "C"** attached hereto and made a part hereof ("the Public Improvements"), all such work to be performed within the time and strictly in accordance with the plans and specifications approved by City (the "Approved Plans") as specified in said **Exhibit "C"**, and any approved modifications thereof, and in accordance with all applicable statutes, ordinances, rules and regulations of the City as they exist as of the Effective Date (except as otherwise provided in this Agreement) and any other federal, state, or local governmental agency having jurisdiction over the work.

(b) **Security.** Developer shall procure and maintain in full force and effect good and sufficient surety bonds issued by an acceptable surety company admitted to transact

business in the State of California, in form and substance approved by the City Attorney, or other form of security acceptable to the City, as follows: Developer shall provide a surety bond to the City at the time Developer applies for a permit to construct a Public Improvement, and such surety bond shall be in an amount equal to 100% of the estimated costs of constructing such Public Improvement (subject to the City Engineer's review of such estimated costs as provided for below).

City's acceptance of the above referenced surety bonds shall in no way limit the obligation of Developer to provide adequate security for all work to be performed under this Agreement and City reserves the right to request additional security in the event the City Engineer reasonably determines that one or more of the bonds given for any portion of the Public Improvements is inadequate to cover the estimated cost of constructing or completing the same. No change, alteration, or addition to the terms of this Agreement or the Approved Plans for the Public Improvements, and no extension of time granted by City for completion of any work, shall in any manner affect the obligation of those providing security pursuant to this Agreement.

(c) **Release of Security.** City agrees that upon completion of the Public Improvements and issuance by the City Engineer of final construction acceptance of the work, the amount of the performance bond or other security covering such completed work may be reduced to ten percent (10%) of the original amount, to secure Developer's obligation hereunder to correct work which is found to be defective or not constructed in accordance with the Approved Plans. Alternatively, Developer may elect to furnish a separate bond during the one (1) year warranty period, in which event the original performance and payment bonds covering the completed work shall be released and cancelled with respect to such work. At the termination of the one (1) year warranty period on any completed Public Improvements, City will release all security covering such Public Improvements, except for any amount determined by the City Engineer to be needed for the repair or replacement of any defects subject to warranty under this Agreement, as identified in writing by the City Engineer.

(d) **Maintenance And Warranty Of Work; Repair of Damage; Correction By City.** Developer shall maintain all Public Improvements constructed or installed hereunder until acceptance thereof by the City Engineer, which acceptance shall not be unreasonably delayed by the City Engineer. Developer hereby warrants to City that all Public Improvements shall be free of defects in material or workmanship and Developer agrees to promptly correct any such defects discovered and disclosed to Developer within one (1) year from the date of final construction acceptance of the improvements by the City Engineer, which acceptance shall not be unreasonably delayed by the City Engineer, such obligation to be secured by a bond or other security to be provided to City in accordance with Paragraphs (b) and (c) of this Section 3.3. In addition to the foregoing, Developer shall also repair any damage caused by Developer or its contractors to any public road or street or any other public or private property or improvement thereon resulting from Developer's performance of the work contemplated by this Agreement. In the event Developer fails to correct the defect or damage within thirty (30) days after notice thereof is given by City, or, if such defect or damage cannot be corrected within such period of time, then upon the failure by Developer to commence the corrective work within thirty (30) days and prosecute the same diligently to completion, City shall have the right, but not the obligation, to repair the defect or damage, or cause the same to be repaired, and Developer shall pay to City

upon demand all costs and expenses for such repair work. If, in the opinion of the City Engineer or other authorized representative of City, the defect or damage constitutes an imminent hazard to the public health or safety, the City Engineer or said authorized representative shall attempt to give notice of such hazard to Developer by direct or telephonic verbal communication or by written notice personally delivered to the offices of Developer or sent by means of facsimile transmission. In the event Developer does not take immediate and appropriate corrective action in response to the notice, or if, for any reason, the City Engineer or said authorized representative is unable to notify Developer of the emergency situation, City shall have the right to immediately repair the defect or damage and charge Developer for all costs and expenses incurred by City in connection therewith, regardless of whether the repair work was temporary or permanent in nature.

(e) **Transportation Improvements at Sierra Point Parkway and US 101 Northbound Offramp.** The EIR identifies in Impact TRANS-4 that the implementation of the Project would contribute to a significant cumulative impact at the intersection of Sierra Point Parkway and the US 101 northbound ramp that remains "significant and unavoidable" even following the implementation of Mitigation Measure TRANS-4. A traffic improvement involving the restriping of the turn lanes at the northbound approach of the Sierra Point Parkway and US 101 northbound offramp to convert the existing through/left lane to a shared left/through/right lane (the "Restriping Improvement") would reduce Impact TRANS-4 to a less-than-signficant level. Such traffic improvement is within the jurisdiction of Caltrans and it is not currently known whether such traffic improvement can be constructed in a manner that meets the requirements and approval of Caltrans; consequently, the Restriping Improvement cannot be included as a feasible mitigation measure required under the EIR. Nonetheless, the Parties wish to cooperate to implement the Restriping Improvement, and agree as follows:

(i) The Parties agree to reasonably cooperate to seeking Caltrans' approval to implement the Restriping Improvement, and if such approval is obtained, Developer shall complete the Restriping Improvement by the later of (i) the issuance of a Certificate of Occupancy for the third Building (as defined in Exhibit C), or (ii) as promptly as reasonably practicable following Caltrans's approval of the Restriping Improvement.

(ii) Because the Restriping Improvement is intended to benefit, and is in part required by the cumulative effect of, all Future Developments (as defined in Exhibit C), Developer shall be entitled to reimbursement from such Future Developments for approved costs (inclusive of design and outside management costs) incurred by Developer for the implementation of the Restriping Improvement. Such reimbursements shall be made in accordance with the provisions set forth in Section II of Exhibit C. The City shall require, through conditions of approval or other mechanisms, each Future Development to reimburse Developer its fair share of such costs (as adjusted for any increase in the San Francisco Consumer Price Index for "All Urban Consumers" (All Items) since the date the costs were incurred by Developer) based on the proportion each Future Development's anticipated traffic volume, as calculated and determined by the City Engineer using accepted industry standards, bears to the total anticipated traffic volume of the Future Developments and the Project.

3.4. Subsequent Project Approvals. Developer shall submit applications for any and all Subsequent Project Approvals as necessary to develop the Project, subject to the

City's discretionary police powers to issue such Subsequent Project Approvals. Upon submission by Developer of any application and upon the determination by City that such application is complete, City shall promptly commence and diligently complete all steps necessary to review and process the requested Subsequent Project Approvals subject to the terms and conditions of this Agreement, the Governing Ordinances, the Conditions of Approval, the Construction Standards, and all Laws. Notwithstanding the foregoing, City is not obligated to issue any permit or a Certificate of Occupancy for any portion of the Project unless and until all fees and charges due and payable for that phase have been received by City and all other applicable requirements set forth in the Governing Ordinances, the Conditions of Approval, the Construction Standards, and this Agreement (including **Exhibit "C"**) for that phase have been satisfied.

(a) Subsequent Project Approvals contemplated for the Project include:

(1) Any required permits from agencies other than City.

(2) Grading and Building Permits.

(3) Certificates of Occupancy.

(4) Lot Line Adjustment.

(b) The parties acknowledge that development of the Project will require issuance of all Subsequent Project Approvals, including, without limitation, those listed under (a) above. Notwithstanding any other provision in this Agreement, City retains the discretion to formulate conditions of approval for all Subsequent Project Approvals for the Project, as long as such conditions of approval are consistent with the Governing Ordinances, the Construction Standards, and this Agreement.

3.5 Project Schedule. The schedule for the development of the Project is set forth in **Exhibit "D"**.

3.6. Environmental Review. The environmental review for the Project has been completed.

3.7. Other Governmental Permits. Developer shall apply for such other permits and approvals as may be required by City and other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. Developer will be responsible for obtaining such other permits and approvals and payment of all costs and expenses that may be incurred in connection therewith.

3.8. Liability Insurance and Workers Compensation Insurance. Prior to the commencement of construction (or any work related thereto) upon the Project Site or on any off-site Public Improvements by Developer or its agents or contractors, Developer shall furnish, or cause to be furnished, to City duplicate originals or appropriate certificates of comprehensive general liability insurance policies in the amount of at least $2,000,000 for any occurrence, naming City, it officials, officers, employees and volunteers as additional insureds. Such insurance policies shall comply with City's "Insurance Requirements For

Developers" attached hereto as **Exhibit "E"** and made a part hereof. Developer shall maintain and keep in force such insurance coverage for the term of this Agreement.

Developer shall maintain Workers' Compensation insurance for all persons employed by Developer for work at the site or for work performed pursuant to this Agreement. Developer shall require each contractor and subcontractor similarly to provide Workers' Compensation insurance for its respective employees. Developer agrees to indemnify City for any damage resulting from Developer' failure to maintain any such insurance.

3.9 Prevailing Wage. If for any reason, the Prevailing Wage Laws as contained in California Labor Code Section 1720 *et seq*. are found to be applicable to the Project, Developer and its contractors shall comply with such laws. Developer shall indemnify, defend, and hold City harmless from any cost, expense or liability resulting from Developer's failure to pay prevailing wages when required by law.

SECTION 4. SPECIFIC CRITERIA APPLICABLE TO DEVELOPMENT OF THE PROJECT.

4.1. Applicable Ordinances and Approvals. Developer shall have the right to proceed with development of the Project in compliance with the Project Approvals, this Agreement, and the Governing Ordinances, subject to the following:

(a) During the term of this Agreement, City may, in subsequent actions applicable to the Project Site or the Property, apply new or modified Ordinances, resolutions, rules, regulations and official policies that were not in force as of the Effective Date of this Agreement and which are not in conflict with the Governing Ordinances, provided that such new or modified ordinances, resolutions, rules, regulations, or official policies do not:

(1) Limit or reduce the density or intensity of all or any part of the Project, or otherwise require any reduction in the square footage or total number of proposed buildings;

(2) Limit the timing, rate of development or phasing of the Project;

(3) Limit the improvements on the Project Site in a manner which is inconsistent with or more restrictive than the limitations included in this Agreement;

(4) Apply to the Project or the Project Site any law, regulation, or rule otherwise allowed by this Agreement which is not uniformly applied on a city-wide basis in a manner which does not discriminate against Developer; or

(5) Impose upon Developer any Exactions or obligations to construct or to fund the construction of public improvements beyond the obligations imposed by the Project Approvals, the Governing Ordinances, the Construction Standards and this Agreement.

The above list of actions is not intended to be comprehensive, but is illustrative of the types of actions that would conflict with this Agreement and the Governing Ordinances. Without limiting the foregoing, no moratorium, slow growth, or other limitation affecting use permits, building permits or other land use entitlements, or the rate, timing or sequencing thereof that is inconsistent with this Agreement shall apply to the Project or the Project Approvals. Except for the Construction Standards governing construction, building, fire, plumbing, electrical and life safety and the City's Green Building Ordinance, no amendment of the Governing Ordinances or new Ordinance, rule, regulation or policy which is inconsistent with the terms of the Governing Ordinances, or which is inconsistent with any term or condition of this Agreement, shall apply to the Project or the Project Site.

(b) Notwithstanding anything in this Agreement to the contrary, City may apply the then-current Construction Standards, green building standards (provided such standards do not exceed the requirements of the City's Green Building Ordinance, as further described in Section 1.3), and other uniform construction codes to any Subsequent Project Approval provided such standards are applied on a city-wide basis in a manner which does not discriminate against Developer. Nothing in this Agreement shall prevent City from denying or conditionally approving any Subsequent Project Approval on the basis of any new or modified ordinances, resolutions, rules, regulations or policies applicable to the Project or the Property subject to the limitations set forth in this Section 4.1.

4.2. **Construction Related Representatives.** Representatives of City shall have the reasonable right of access to the Project Site, at normal construction hours during the period of construction for the purposes of this Agreement or any other purpose authorized by any applicable Law, including, but not limited to, the inspection of the work being performed in constructing the improvements.

4.3 Exactions. As a material part of the consideration for this Agreement, Developer shall not be subject to future Exactions established by the City after the date of this Agreement that otherwise might be imposed on a discretionary basis as conditions to granting land use permits and approvals. Therefore, this Agreement and the Project Approvals fully set forth all of Developer's obligations pertaining to the Exactions for the Project Approvals over which the City has control. Developer's performance of its obligations under this Agreement shall fully satisfy all present and future requirements of City for Exactions that could be required for the Project Approvals and City shall not require from Developer any additional Exactions for granting such Project Approvals.

4.4 Subsequently Enacted or Revised Fees, Assessments and Taxes

(a) **Revised or Newly Adopted Fees.** Any existing application, processing, and inspection fees that are revised during the term of this Agreement, and application, processing and inspection fees that are newly adopted during the term of this Agreement, shall apply to the Project and the Property provided that: (i) such fees have general applicability on a city-wide basis and do not discriminate against Developer; (ii) the application of such fees to the Project and the Property is prospective; and (iii) the application of such fees would not prevent development of the Project in accordance with this Agreement.

(b) **Increased or New Taxes.** Except for taxes solely imposed on new development, any subsequently increased or newly enacted city-wide taxes shall apply to the Project and the Property provided that: (i) such taxes have general applicability on a city-wide basis and do not discriminate against Developer; (ii) the application of such taxes to the Project and the Property is prospective; and (iii) the application of such taxes would not prevent development of the Project in accordance with this Agreement.

(c) **Assessments.** Nothing in this Agreement shall be construed to relieve the Property from assessments levied against it by the City pursuant to any statutory procedure for the assessment of property to pay for infrastructure and services which benefit the Property.

(d) **Right to Contest.** Nothing in the Agreement shall prevent Developer from paying any fee, tax or assessment under protest, or otherwise asserting its legal rights to protest or contest any fee, tax or assessment charged or levied against the Project or the Property.

SECTION 5. PERIODIC REVIEW OF COMPLIANCE.

5.1. Annual Review.

(a) **Review Date.** The annual review date for this Agreement shall be on the first day of the month following the anniversary of the Effective Date, or as reasonably soon thereafter as the matter can be placed on the agenda of the City Council.

(b) **Initiation of Review.** The City's Community Development Director shall initiate the annual review by giving to Developer thirty (30) days' written notice that the City intends to undertake such review. The notice shall specify the date on which a public hearing on the annual review shall be conducted by the City Council, as required by Section 604 of the Development Agreement Procedures. Developer shall provide evidence to the Community Development Director prior to the hearing on the annual review to demonstrate good faith compliance with the provisions of the Agreement as provided in Government Code §§ 65864 *et seq*.

(c) **Staff Reports.** To the extent practical, City shall deposit in the mail and fax to Developer a copy of all staff reports, and related exhibits concerning contract performance at least five (5) days prior to the hearing on the annual review.

5.2. Notice of Compliance. With respect to each year for which an annual review of compliance with this Agreement is conducted and where pursuant to Section 5.1 of this Agreement City determines Developer to be in compliance, City, upon request of Developer, shall provide Developer with a written certificate of compliance, in recordable form, duly executed and acknowledged by City ("Notice of Compliance"). Developer shall have the right, in Developer' sole discretion, to record any Notice of Compliance.

5.3 Remedies for Noncompliance. If the City Council finds and determines, on the basis of substantial evidence, that Developer has not complied with the terms and

conditions of this Agreement during the period under review, and Developer has been notified of such default and given an opportunity to cure in accordance with the provisions of Section 12.1 of this Agreement, the City Council may modify or terminate this Agreement, as authorized by California Government Code Section 65865.1.

5.4 Fee For Annual Review. The fee for City's annual review shall be paid by Developer and shall not exceed the costs of City staff time and expenses at the customary rates then in effect.

SECTION 6. PERMITTED DELAYS; SUPERSEDURE BY SUBSEQUENT LAWS.

6.1. Permitted Delays. In addition to any specific provisions of this Agreement, performance by any party of its obligations hereunder may be excused during any period of delay caused at any time by reason of (i) war or civil commotion, riots, strikes, picketing, or other labor disputes; (ii) unavoidable shortage of materials or supplies, (iii) damage to work in process by reason of fire, rains, floods, earthquake, or other acts of God; (iv) restrictions or delays imposed or mandated by governmental or quasi-governmental entities; (v) enactment of conflicting Laws (including, without limitation, new or supplementary environmental regulations); (vi) litigation initiated by a nonparty challenging this Agreement or any Project Approval; or (vii) failure of nonparty agencies to promptly process and grant a Project Application through no fault of Developer. Each party shall promptly notify the other party of any delay hereunder as soon as possible after the same has been ascertained. The deadlines set forth herein shall be extended by the period of any delay hereunder; provided, however, any extensions of time for the performance by Developer of its obligations hereunder is subject to review and approval by the City, which approval shall not be unreasonably withheld.

6.2. Supersedure by Subsequent Laws. If any Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the Parties shall meet in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in Developer's reasonable business judgment, then Developer shall have the right to terminate this Agreement by written notice to the City. If the duration of the period during which such new Law precludes compliance with the provisions of this Agreement (such period, a "Moratorium Period") is less than or equal to one-half (1/2) of the remaining Land Use Term, then, at the Developer's election, the Land Use Term may be extended for the length of such Moratorium Period. If the Moratorium Period is more than one-half (1/2) of the remaining Land Use Term, then, at Developer's election and subject to approval by the City Council, the Land Use Term of this Agreement may be extended pursuant to Section 6.1 for the duration of the period during which such new Law precludes compliance with the provisions of this Agreement. In addition, Developer shall have the right to challenge the new Law preventing compliance with the terms of this Agreement, and, during the period of such challenge, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect,

except that the Land Use Term may be extended by the period of such challenge pursuant to Section 6.1 above.

SECTION 7. TRANSFERS AND ASSIGNMENTS.

7.1. Right to Assign. Developer may sell, transfer or assign all or a portion of the Property to third parties (each such other developer is referred to as a "Transferee"), including an assignment to such Transferee of any or all rights, interests and obligations of the Developer hereunder that pertain to the Property or portion of the Property being sold or transferred to such Transferee, *provided, however*, that no sale or transfer of the Property or any interest therein and no assignment of Developer's rights, interests and obligations under this Agreement shall occur without the prior written consent of the City, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Developer may at any time, upon notice to City but without the necessity of any approval by the City, transfer the Property or any part thereof and all or any part of Developer's rights, interests and obligations hereunder to: (i) any subsidiary, affiliate, parent or other entity which controls, is controlled by or is under common control with Developer or HCP Estates USA Inc., (ii) any member of Developer or any subsidiary, parent or affiliate of any such member, or (iii) any successor or successors to Developer or HCP Estates USA Inc. by merger, acquisition, consolidation, non-bankruptcy reorganization or government action.

7.2 Effect of Sale, Transfer or Assignment. Developer shall be released from any obligations hereunder sold, transferred or assigned to a Transferee pursuant to Section 7.1 of this Agreement, provided that such obligations are expressly assumed by Transferee and Transferee shall agree in writing to be subject to all the terms and conditions of this Agreement.

7.3 Permitted Transfer, Purchase or Assignment. The sale or other transfer of any interest in the Property to a lender ("Lender") as a result of a foreclosure or deed in lieu of foreclosure under a deed of trust encumbering the Property, and the subsequent transfer by the Lender to a purchaser ("Purchaser") shall not require the City's approval pursuant to the provision of Section 7.1; *provided, however,* subject to Section 11 of this Agreement, the Lender and any subsequent Purchaser shall take the Property subject to all of the provisions of this Agreement. In no event shall any such Lender or Purchaser be entitled to a building permit, occupancy certificate, or any other permit or approval by the City until all defaults under this Agreement relating to the portion of the Property acquired by such Lender or Purchaser have been cured.

SECTION 8. AMENDMENT AND TERMINATION.

8.1. In General. Except as provided in Section 12.1 relating to termination in the Event of Default, this Agreement may be canceled, modified or amended only by mutual written consent of the parties.

8.2. Major Amendment. Any amendment to this Agreement which relates to the Land Use Term, permitted uses, density or intensity of use, maximum height or maximum dimensions of buildings, requirements for acquisition, reservation or dedication

of land for public improvements, the timing or nature of the infrastructure improvements, or which causes a significant environmental impact which is not adequately mitigated, shall be deemed a "Major Amendment" and shall require the same procedure as followed for the initial approval of this Agreement. Notwithstanding the foregoing, Developer shall have the right to amend and revise its architectural plans for the Project subject to City's adopted procedure for amendment of Design Permits.

8.3. Recordation of Amendment. The City shall record an appropriate notice of any Major Amendment, cancellation or termination of this Agreement with the San Mateo County Recorder not later than ten (10) days after the City's action on such amendment, cancellation or termination becomes final. The notice shall be accompanied by a legal description of the Property.

SECTION 9. NOTICES.

9.1. Procedure. Any notice or communication required pursuant to this Agreement by any party ("Notices") shall be in writing and shall be given either personally, by facsimile transmission, by Federal Express or other similar courier promising overnight delivery, or by regular U. S. mail.

(a) If given by Federal Express or similar courier, the Notice shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier.

(b) If personally delivered, a Notice shall be deemed to have been given when actually delivered to the party to whom it is addressed.

(c) If delivered by facsimile transmission, a Notice shall be deemed to have been given upon receipt of the entire document by the receiving party's facsimile machine as shown by the transmission report issued by the transmitting facsimile machine. Notice transmitted after 5:00 p.m. or on Saturday or Sunday shall be deemed to have been given on the next business day.

(d) If delivered by regular U. S. mail, a Notice shall be deemed to have been given three (3) business days after deposit with the U. S. Postal Service. Notices shall be given to the parties at their addresses set forth below:

City:
Community Development Director
City of Brisbane
50 Park Place
Brisbane, CA 94005
Telephone: (415) 508-2111
Facsimile: (415) 467-4989

Developer:
HCP Brisbane, LLC
c/o HCP Estates USA Inc.
400 Oyster Point Boulevard
South San Francisco, CA 94080

Telephone: (650) 875-1002
Facsimile: (650) 875-1003

HCP Brisbane, LLC
c/o HCP Estates USA Inc.
444 North Michigan Avenue, Suite 3230
Chicago, Illinois 60611
Telephone: (312) 755-0700
Facsimile: (312) 755-0717

HCP, Inc.
3760 Kilroy Airport Way, Suite 300
Long Beach, CA 90806-2473
Attention: Brian J. Maas
Telephone: (562) 733-5100
Facsimile: (562) 733-5219

Folger Levin & Kahn LLP
275 Battery Street, 23rd Floor
San Francisco, CA 94111
Attention: Donald E. Kelley, Jr.
Telephone: (415) 986-2800
Facsimile: (415) 986-2827

Either party may change its mailing address at any time by giving written notice of such change to the other party in the manner provided herein at least ten (10) days prior to the date such change is effected.

9.2. Form and Effect of Notice. Every Notice (other than the giving or withholding of consent, approval or satisfaction under this Agreement but including requests therefor) given to a party shall comply with the following requirements. Each such Notice shall state: (i) the Section of this Agreement pursuant to which the Notice is given; and (ii) the period of time within which the recipient of the Notice must respond or if no response is required, a statement to that effect. Each request for consent or approval shall contain reasonably sufficient data or documentation to enable the recipient to make an informed decision. In no event shall Notice be deemed given if such Notice did not fully comply with the requirements of this Section. No waiver of this Section shall be inferred or implied from any act (including conditional approvals, if any) of a party, unless such waiver is in writing, specifying the nature and extent of the waiver.

SECTION 10. ESTOPPEL CERTIFICATE.

Either party may, at any time, and from time to time, request written notice from the other party requesting such party to certify in writing that, (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) to the knowledge of the certifying party the requesting party is not in

default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the parties. The City Manager of City shall be authorized to execute any certificate requested by Developer. Should the party receiving the request not execute and return such certificate within the applicable period, this shall not be deemed to be a default, provided that such party shall be deemed to have certified that the statements in clauses (a) through (c) of this Section are true, and any party may rely on such deemed certification.

SECTION 11. MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE.

11.1 Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for 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 the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

11.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 11.1 above, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; *provided, however*, that a Mortgagee shall take title to the Property subject to the terms and conditions of this Agreement and shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Project Approvals or by this Agreement. In no event shall any such Mortgagee be entitled to a building permit, occupancy certificate, or any other permit or approval by City until all defaults under this Agreement relating to the portion of the Property acquired by such Mortgagee have been cured.

11.3 Notice of Default to Mortgagee and Extension of Right to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer have committed an event of default. 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 set forth in the City's notice. City, through its City Manager, may extend the thirty-day cure period provided in Section 12.1 for not more than an additional sixty (60) days upon request of Developer or a Mortgagee.

SECTION 12. DEFAULT.

12.1. Default; Termination. Failure or unreasonable delay by any party to perform any obligation under this Agreement for a period of thirty (30) days after written notice thereof from the other party shall constitute an "Event of Default" under this Agreement. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such thirty (30) day period, the commencement of the cure within such time period and the subsequent diligent prosecution to completion of the cure shall be deemed a cure within such period. However, no thirty (30) day period of cure shall be required where this Agreement specifies a date by which particular actions must be taken. Subject to the foregoing, after notice and expiration of the thirty (30) day period without cure, if applicable, the non-defaulting party, at its option, may institute legal proceedings pursuant to Section 12.3 of this Agreement or proceedings to terminate this Agreement. If proceedings to terminate this Agreement are initiated by City, such proceedings shall be conducted in accordance with the provisions of Section 702 of the Development Agreement Procedures. The waiver by either party of any Event of Default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

12.2. Cooperation in the Event of Third-Party Legal Challenge. In the event of any legal or equitable action or proceeding instituted by a third party challenging the validity of any provision of this Agreement or the procedures leading to its adoption or the issuance of any or all of the Project Approvals and/or the EIR, the parties hereby agree to cooperate in defending said action or proceeding. Developer agree to diligently defend any such action or proceeding and to bear the litigation expenses of defense, including attorneys' fees, with counsel reasonably acceptable to City. City shall have the option to employ independent defense counsel at City's expense.

12.3. Legal Actions; Remedies; Attorney's Fees. In addition to any other rights and remedies, any party may institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the parties hereto. In no event shall any party or its elected or appointed officials, officers, agents, employees or volunteers be liable in monetary damages for any breach or violation of this Agreement, it being expressly understood and agreed that, in addition to the right of termination, the sole legal or equitable remedy available to a non-defaulting party for a breach or violation of this Agreement by the party in default shall be an action in mandamus, specific performance, injunctive or declaratory relief to enforce the provisions of this Agreement. In any such legal action, the prevailing party shall be entitled to recover all litigation expenses, including reasonable attorneys' fees and court costs.

12.4. Effect of Termination. Termination of this Agreement shall not affect Developer's obligation to comply with the standards, terms and conditions of any Project Approvals issued with respect to the Project Site or any portion thereof, nor shall it affect any covenants of Developer which are specified in this Agreement to continue after termination or which must remain in effect to achieve their intended purpose, including but not limited to those set forth in Section 13.

SECTION 13 INDEMNIFICATION AND HOLD HARMLESS

Except for claims, costs and liabilities caused by the negligence, willful misconduct, or breach of this Agreement by City, or its elected or appointed officials, officers, agents, employees and volunteers, Developer hereby agrees to defend, indemnify, save and hold City and its elected and appointed officials, officers, agents, employees and volunteers (collectively, the "City Parties") harmless from any and all claims, costs (including reasonable attorneys' fees) and liabilities for any personal injury, death or property damage (collectively, "Claims") which arise, directly or indirectly, as a result of any construction, improvement, operation, or maintenance work performed by Developer or Developer's contractors, subcontractors, agents or employees in connection with the Project (including work on any off-site improvements), whether such activities were performed by Developer or by any of Developer's contractors or subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, Developer or any of Developer's contractors or subcontractors. Except for claims, costs and liabilities caused by the negligence, willful misconduct, or breach of this Agreement by any of the City Parties, Developer shall defend City Parties with counsel reasonably acceptable to City from actions for such personal injury, death or property damage which is caused, or alleged to have been caused, by reason of Developer's activities in connection with the Project. City will defend, indemnify, save and hold harmless Developer and its officers, agents and employees from any and all Claims caused by the negligence, willful misconduct or breach of this Agreement by any of the City Parties. The parties' obligations under this Section 13 shall survive the expiration or earlier termination of this Agreement.

SECTION 14 MISCELLANEOUS PROVISIONS.

14.1. Negation of Partnership. City and Developer specifically acknowledge that the Project is a private development, that no party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the provisions of this Agreement shall be deemed to create a partnership between or among the parties in the businesses of Developer, or the affairs of City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any person who is not expressly made a party and signatory to this Agreement.

14.2. Severability. Invalidation of any provision of this Agreement, or of the application thereof to any person, by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstances and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

14.3. Incorporation by Reference. The EIR; the Mitigation Monitoring Program, the Governing Ordinances; the Existing Approvals; and the Exhibits to this Agreement are deemed incorporated by reference into this Agreement as if set forth in full, to the extent applicable to the Project.

14.4. Entire Agreement. This Agreement and the Exhibits hereto contain all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, all prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and the Exhibits hereto.

14.5. Further Documents. Each party shall execute and deliver such further documents as may be reasonably necessary to achieve the objectives of this Agreement.

14.6. Governing Law; Interpretation of Agreement. This Agreement shall be governed by and interpreted in accordance with the laws of the United States, the State of California and the City of Brisbane.

14.7. Counterparts. This Agreement may be executed in multiple counterparts, which, when taken together, shall constitute a single document.

14.8. Time of Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

14.9. Notice of Termination. Upon the expiration or earlier termination of this Agreement, the parties hereto shall, if requested by another party, execute for recordation in the Official Records of San Mateo County, a notice stating that this Agreement has expired or has been terminated, and, if applicable, that the parties have performed all their duties and obligations hereunder.

14.10 Successors and Assigns. Subject to the restriction against assignment, this Agreement shall constitute a covenant running with the land and shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties.

14.11. Exhibits. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A Legal Description of the Property

Exhibit B Site Plan

Exhibit C Description of Public Improvements

Exhibit D Project Schedule

Exhibit E Insurance Requirements For Contractors

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

CITY:

CITY OF BRISBANE,
a municipal corporation

Dated: _____

By _____
Mayor

ATTEST:

_____
Sheri Marie Schroeder, City Clerk

APPROVED AS TO FORM:

_____
Harold S. Toppel, City Attorney

DEVELOPER:

HCP LS BRISBANE, LLC
(f/k/a Slough Brisbane, LLC),
a Delaware limited
liability company

By _____

STATE OF CALIFORNIA
COUNTY OF SAN MATEO

On _____, before me, _____ the undersigned Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 _____

STATE OF CALIFORNIA
COUNTY OF _____

On _____, before me, _____ the undersigned Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 _____

EXHIBIT A
Legal Description

EXHIBIT B
Site Plan

EXHIBIT C

Sierra Point Biotech Project Development Agreement
PUBLIC IMPROVEMENTS

Developer and City Obligations

I. EIR MITIGATION MEASURES.

The Final Environmental Impact Report for the Sierra Point Biotech Project (the "Final EIR"), comprised of the Public Review Draft of the Sierra Point Biotech Project Environmental Impact Report, dated November 2006 (the "Draft EIR"), as amended and supplemented by the Sierra Point Biotech Project Environmental Impact Report Response to Comments Document, dated April 2006 (the "EIR Response"), sets forth a number of mitigation measures that the Developer must implement. The timing and manner of implementation for such mitigation measures are addressed in the Conditions of Approval for the Project. In addition, for the specific mitigation measures identified below, the parties further agree as follows:

A. TRANS-1 and TRANS-4 (Improvements at Sierra Point Parkway and US 101:

Mitigation measures TRANS-1 and TRANS-4 require the installation of a signal at the intersection of Sierra Point Parkway and US 101 northbound ramp and restriping of the turn lanes at the northbound approach of the Sierra Point Parkway and US 101 northbound offramp to convert the existing through/left lane to a shared left/through/right.

This installation shall be completed before the issuance of a Certificate of Occupancy for the third office/R&D building in the Project (each office/R&D building in the Project a "Building").

B. TRANS-2 and TRANS-5 (Improvements at Sierra Point Parkway and Lagoon Way)

Mitigation measures TRANS-2 and TRANS-5 require modification of the intersection of Sierra Point Parkway and Lagoon Way so that the intersection is signalized and a second northbound through lane is added. The City acknowledges that the construction of such improvements at Sierra Point Parkway and Lagoon Way are the responsibility of SPLLC under the SPLLC Second Amendment, and that mitigation measures TRANS-2 and TRANS-5 will be satisfied by SPLLC's completion of its obligations under the SPLLC Second Amendment.

Within 60 days of issuance of a Certificate of Occupancy for the first Building, Developer shall complete a traffic count per the requirements of City's Public

Works Department and submit the results of this count to the City Engineer. Traffic counts shall be taken annually, until such time as the trip thresholds specified in the SPLLC Second Amendment triggering the mitigation improvements is reached, or one year after issuance of the Certificate of Occupancy for the final Building, whichever occurs first.

C. TRANS-3 and TRANS-6 (Improvements at Sierra Point Parkway and Shoreline Court)

Mitigation measures TRANS-3 and TRANS-6 require the signalizing of the intersection of Sierra Point Parkway and Shoreline Court and adding a second northbound left-turn lane, a second southbound right-turn lane, and a second eastbound left-turn lane. The City acknowledges that the construction of these improvements at Sierra Point Parkway and Shoreline Court are the responsibility of SPLLC under the SPLLC Second Amendment. City acknowledges that mitigation measures TRANS-3 and TRANS-6 will be satisfied by SPLLC's completion of its obligations under the SPLLC Second Amendment.

Within 60 days of issuance of a Certificate of Occupancy for the first Building, Developer shall complete a traffic count per the requirements of City's Public Works Department and submit the results of this count to the City Engineer. Traffic counts shall be taken annually, until such time as the trip thresholds specified in the SPLLC Second Amendment triggering the mitigation improvements is reached, or one year after issuance of the Certificate of Occupancy for the final Building, whichever occurs first.

D. TRANS-7 (Improvements at Bayshore Boulevard and Old County Road)

Developer shall construct up to two of the following three measures described in Mitigation measure TRANS-7, as determined by the City Engineer: (1) Install an additional second eastbound left-turn lane and convert the existing shared-through-left turn lane to a through lane at Bayshore and Old County Road, (2) Install a westbound through lane at Bayshore and Old County Road, (3) Adjust the signal timing of the intersection. Developer will submit design plans for the TRANS-7 Mitigation Improvements to be constructed by Developer to the City for its review and approval, and will complete the TRANS-7 Mitigation Improvements prior to receiving a Certificate of Occupancy for the third Building.

The City agrees that Developer will not be required to provide any further traffic analysis in connection with the Project, excepting the annual traffic counts required above.

Because the traffic improvements required by mitigation measure TRANS-7 are intended to benefit, and are in part required by the cumulative effect of, all future development at Sierra Point other than the Project (each, a "Future Development," specifically which includes any development located on any of

the parcels marked "Vacant" [other than the Project site] on Figure IV.A-1 of the Draft EIR), Developer shall be entitled to reimbursement from such Future Developments for approved costs (inclusive of design and outside management costs) incurred by Developer for the construction of these traffic improvements. Such reimbursement shall be made in accordance with the provisions set forth in Section II of this Exhibit C. The City shall require, through conditions of approval or other mechanisms, each Future Development to reimburse Developer its fair share of such costs (as adjusted for any increase in the San Francisco Consumer Price Index for "All Urban Consumers" (All Items) since the date the costs were incurred by Developer) based on the proportion each Future Development's anticipated traffic volume, as calculated and determined by the City Engineer using accepted industry standards, bears to the total anticipated traffic volume of the Future Developments and the Project.

In the event any Future Development is issued a building permit before the Developer is issued a permit to construct the TRANS-7 Mitigation Improvements, the City may require such Future Development to implement and construct the TRANS-7 Mitigation Improvements or any portion thereof, and Developer will pay, within 30 days of the City's issuance of a building permit for each Building (and in no event will the City issue a Certificate of Occupancy for a Building before Developer has paid its fair share contribution), its fair share of the costs for the TRANS-7 Mitigation Improvements constructed by the Future Development, based on the proportion such Building's anticipated traffic volume, as reasonably calculated and determined by the City Engineer, bears to the total anticipated traffic volume of the Future Developments and the Project. If the Future Development does not construct all of the TRANS-7 Mitigation Improvements, City shall require, through conditions of approval or other mechanism, the such Future Development contribute its proportionate share of the cost as and when the remaining Improvements are constructed.

E. UTL-2a and 2b (Interim Fire Flow Connection with Cal Water)

UTL-2a: Prior to issuance of building permits, Developer shall install a pressure reducing/pressure sustaining valve on the 16-inch interconnection between CalWater and the City of Brisbane Water Districts in a valve box located in the center median of Shoreline Court pursuant to plans and specifications approved by the City Engineer, which approval shall not be unreasonably withheld or delayed. The valve shall be properly sized and have the ability to provide bidirectional fire flow to Sierra Point and the proposed project while concurrently maintaining the capacity to provide the required fire flow and pressure to the CalWater District. The new interconnection assembly shall comply with the City of Brisbane Public Works Department, CalWater and North County Fire Department specifications.

UTL-2b: To implement UTL-2a, an agreement shall be made between CalWater and the City of Brisbane Water District, and a program prepared

that identifies and establishes responsibilities and operating ranges for the pressure reducing/pressure sustaining valve and the routine maintenance and testing of the facility. Developer shall be responsible for all costs associated with preparation and implementation of the program.

Because the mitigation measures required by UTL-2a and UTL-2b are intended to benefit, and are in part required by the cumulative effect of Future Developments, Developer shall be entitled to reimbursement from such Future Developments for approved costs (inclusive of design and outside management costs) incurred by Developer for the construction and implementation of these mitigation measures. Such reimbursement shall be made in accordance with the provisions set forth in Section II of this Exhibit C. The City shall require, through conditions of approval or other mechanisms, each Future Development to reimburse Developer its fair share of such costs (as adjusted for any increase in the San Francisco Consumer Price Index for "All Urban Consumers" (All Items) since the date the costs were incurred by Developer) based on the proportion each Future Development's fire flow requirements, as reasonably calculated and determined by the City Engineer, bears to the total anticipated fire flow requirements of the Future Developments and the Project.

F. UTL-2c (Future Fire Storage Water Tank)

Developer agrees to pay its fair share of construction costs for a fire and domestic water storage tank, to be developed by the City of Brisbane at a future date. Developer's fair share of the costs will be based on the Project's projected peak water use and average water use as analyzed in the Project's Environmental Impact Report. Specifically, Developer's percentage share of the construction costs shall be calculated based on the Project's projected peak domestic water use rate (372,000 gallons per day) less its projected average use rate (124,000 gallons per day), or 248,000 gallons per day, divided by the total storage capacity of the future water tank. Developer will pay its fair share of the water storage tank construction costs within thirty (30) days after both of the following circumstances shall have occurred:

1. the total occupied space campus-wide within Developer's Project exceeds 180,000 square feet (to be determined based on the City's issuance of certificates of occupancy allowing occupancy of Buildings in Developer's Project comprising at least that amount of square footage); and

2. City gives written notice to Developer of the amount payable as Developer's fair share of the water storage tank (supported by reasonable documentation showing how such amount was determined)

G. UTL-4 (Upgrade to Sierra Point Lift Station)

Mitigation measure UTL-4 requires Developer to pay for the installation of larger pumps or a complete replacement of the Sierra Point Lift Station.

1. Upgrades to Sierra Point Lift Station. Developer agrees to construct the necessary upgrades to the Sierra Point Lift Station (the "Lift Station Upgrade") to adequately support a total peaked demand of 1.01 million gallons per day (mgd), which is the total demand anticipated in the EIR of the full build-out at Sierra Point (*see* EIR Response, page 78). Developer will submit its plans and calculations to the City for its review and approval, and will complete the Lift Station Upgrade prior to receiving a Certificate of Occupancy for the third Building or for 295,000 square feet of Building space, whichever occurs first; provided, however, that if the City Engineer determines in accordance with accepted industry standards that the Sierra Point Lift Station will reach capacity prior to the occupancy of the third Building or of 295,000 square feet of Building space, City shall provide Developer notice and documentation showing the calculations underlying such determination and Developer shall complete the Lift Station Upgrade within six months of the later of (a) the date on which written notice of such determination is given by the City Engineer to Developer, or (b) the date of City's issuance of a certificate of occupancy for the first Building.

2. Reimbursement of Costs From Future Developments. Because the Lift Station Upgrade is intended to benefit Future Developments, Developer will be entitled to reimbursement from such Future Developments. The City will require, through conditions of approval or other mechanisms, each Future Development to reimburse Developer its fair share of Developer's actual costs (inclusive of design and outside management costs) to construct the Lift Station Upgrade (the "Lift Station Upgrade Costs"). The fair share of the Developer and each Future Development will be calculated in accordance with the definitions, assumptions and formulas set forth below:

Definitions:

Reimbursement to Developer =	Cost reimbursement payable to Developer by Future Developments benefiting from the Lift Station Upgrade
Cost of Improvements =	Lift Station Upgrade Costs (substantiation of costs to be submitted to the City upon completion and acceptance of the Lift Station Upgrade, subject to review and approval by the City Engineer per Section II below)
Flow Rate =	Peaked flowrate of a Future Development (represented in gallons per day), which peaked flowrate shall be calculated by multiplying a peaking factor of not less than 3 to the average flowrate of the Future Development, as such average flowrate is reasonably determined by the

	City Engineer.
Total Anticipated Increase in Flow =	Total anticipated increase in peaked flow to the Sierra Point Lift Station over the existing peaked flow of 0.46 mgd, which anticipated increase includes the assumed peaked flowrate of 0.336 mgd from the Project plus anticipated peaked flow from the Future Developments. This value will be calculated and finalized by the City and Developer during the design and approval process of the Lift Station Upgrade.
$CPI^{\text{Year of Reimbursement}}$ =	San Francisco Consumer Price Index for "All Urban Consumers (All Items)" as categorized by the U.S. Department of Labor (or if no longer available, any comparable successor index) as of the most recent month for which such index data is available preceding the date a Future Development's fair share contribution (or in the case of Scenario 3B (as described below), the Developer's fair share contribution) is due to be paid
$CPI^{\text{Year of Installation}}$ =	San Francisco Consumer Price Index for "All Urban Consumers (All Items)" as categorized by the U.S. Department of Labor (or if no longer available, any comparable successor index) as of the most recent month for which such index data is available to the date the Lift Station Upgrade is completed and accepted by the City
CPI Adjustment =	$CPI^{\text{Year of Reimbursement}}$ divided by $CPI^{\text{Year of Installation}}$, but in no event less than 1.

Calculation of Developer's Share. Developer's share of the Lift Station Upgrade Costs ("Developer's Share") shall be calculated as follows:

$$\text{Developer's Fair Share} = \frac{0.336\ mgd}{\text{Total Anticipated Increase in Flow}}\ x \text{Cost of Improvements}$$

Calculation of Each Future Development's Share. Each Future Development's share of the Lift Station Upgrade Costs shall be calculated as follows:

Scenario 1: If the Lift Station Upgrade has been completed and the Future Development's anticipated demand does not exceed the Sierra Point Lift Station's capacity after taking into account the anticipated flow from Developer's entire Project, then such Future Development's fair share contribution to the Developer will be:

Reimbursement to Developer = (Flow Rate ÷ Total Anticipated Increase In Flow) x Cost of Improvements x CPI Adjustment

The specific values for the Flow Rate and the CPI Adjustment will be determined (as reasonably calculated by the City Engineer) at the time conditions of approval (or other discretionary approval) for each Future Development are given final approval. The City shall require the Future Development to pay the amounts due under the recapture formula in accordance with the provisions set forth in Section II of this Exhibit C.

Scenario 2: If the Lift Station Upgrade has been completed and the Future Development's anticipated demand exceeds Sierra Point Lift Station's capacity after taking into account the anticipated flow from Developer's entire Project (such that the City requires that the Future Development further upgrade the Sierra Point Lift Station), then such Future Development's fair share contribution to Developer will be the remaining reimbursements due Developer for the Lift Station Upgrade Costs, calculated as follows:

Reimbursement to Developer =
(Cost of Improvements x CPI Adjustment) minus
Developer's Fair Share, minus
sum of all Reimbursements to Developer paid by previous Future Developments

The City shall require the Future Development to pay the amounts due under the above recapture formula to Developer in accordance with the provisions set forth in Section II of this Exhibit C.

Scenario 3: If Developer has not commenced construction of the Lift Station Upgrade when a Future Development is issued a building permit, the City will determine whether the Future Development's anticipated discharge will exceed the then-existing capacity of the Sierra Point Lift Station.

Scenario 3A: If the anticipated discharge from the Future Development does not exceed the then-existing capacity of the Sierra Point Lift Station, then such Future Development's fair share contribution to the Developer will be:

Reimbursement to Developer = (Flow Rate ÷ Total Anticipated Increase In Flow) x Cost of Improvements x CPI Adjustment

The specific values for the Flow Rate and CPI Adjustment will be determined (as reasonably calculated by the City Engineer) at the time conditions of approval (or other discretionary approval) for each Future

Development are given final approval, and Developer will provide an estimate of the anticipated Lift Station Upgrade Costs. The City shall require the Future Development to provide security in form and amount satisfactory to the City to assure payment by the Future Development of its share of the Lift Station Upgrade Costs. Provided that Developer has satisfied its obligations to procure and maintain surety bonds under Section 3.3(b) of the Agreement, City will disburse to Developer from the deposited funds the proportionate share of the construction costs for the Lift Station contributed by the Future Development, within thirty (30) days of when such costs are incurred and submitted by Developer.

The City shall further require that after Developer has completed the Lift Station Upgrade and after Developer has provided the City and the Future Development with its actual Lift Station Upgrade Costs and such costs have been approved by the City Engineer, the Future Development shall pay the amounts due under the above recapture formula (using the actual Lift Station Upgrade Costs) less any cash deposit already paid towards such costs, in accordance with the provisions set forth in Section II of this Exhibit C.

Scenario 3B: If the anticipated discharge from the Future Development does exceed the then-existing capacity of the Sierra Point Lift Station, then the City shall require such Future Development to implement and construct the Lift Station Upgrade, and Developer will pay its fair share, calculated as follows:

$$\text{Developer's Contribution} = \frac{0.336\ mgd}{\text{Total Anticipated Increase in Flow}} \times \text{Cost of Improvements x CPI Adjustment}$$

Developer will pay its contribution (as calculated above) within 30 days if the Developer has previously been issued its first or subsequent building permit, or within 30 days of City's first issuance of a building permit to Developer.

Scenario 4: If Developer has commenced but not yet completed construction of the Lift Station Upgrade when a Future Development is issued a building permit, and the City determines that such Future Development's anticipated demand will not require improvements to the Sierra Point Lift Station other than the Lift Station Upgrade, then such Future Development's fair share contribution and payment obligations shall be the same as those for Future Developments under Scenario 3A.

3. Change In Requirements To Lift Station Upgrade Due To Future Developments. In the event Developer has not yet completed construction of the Lift Station Upgrade and the City determines that

as a result of a Future Development, improvements to the Sierra Point Lift Station other than the Lift Station Upgrade are required to meet the anticipated sewer demand for Sierra Point, Developer will cooperate with the City and the Future Development to construct and/or to contribute financially to construct the necessary improvements to the Sierra Point Lift Station (or if applicable, to alter its partially completed Lift Station Upgrade to meet the new requirements) in lieu of Developer's requirement to construct the Lift Station Upgrade; provided, that such new improvements or substitute requirements shall not delay the development of the Project nor increase Developer's costs above what Developer would have borne as Developer's Share for the Lift Station Upgrade Costs. Subject to the limitations contained in the immediately preceding sentence, Developer's contribution under this Section F.3 would be calculated as follows:

$$\text{Developer's Contribution} = \frac{0.336\ \text{mgd}}{\text{Total Anticipated Increase in Flow}^*} \times \text{Cost of Improvements}^*$$

*Lift Station - Revised

where the asterisk: "Lift Station – revised" refers to the required improvements to the lift station in lieu of the Lift Station Upgrade.

Developer will pay its contribution (as calculated above) within 30 days if the Developer has previously been issued its first or subsequent building permit, or within 30 days of City's first issuance of a building permit to Developer.

H. UTL-5 (Upgrade 10" gravity sewer line)

Mitigation measure UTL-5 requires Developer to pay for the replacement of the downstream 10-inch gravity line (the "10" Gravity Line") in Sierra Point Parkway.

1. Improvements to 10" Gravity Line. Developer agrees to upsize the 10" Gravity Line between the Project's point of connection and the transition point to the 12" diameter line (the "Gravity Line Improvement"). Developer will submit plans and calculations for review and approval by the City to detail how the Gravity Line Improvement will adequately provide capacity to meet a total peaked demand not to exceed 1.01 million gallons per day (mgd), which is the peaked demand anticipated in the EIR of full build-out at Sierra Point (*see* EIR Response, page 78). Developer will complete the Gravity Line Improvement prior to receiving a Certificate of Occupancy for the third Building or for 295,000 square feet of Building space, whichever occurs first; provided, however, that if the City Engineer determines in accordance with accepted industry standards that the 10" Gravity Line will reach capacity prior to the occupancy of the third Building or of 295,000 square feet of Building space, City shall provide Developer

notice and documentation showing the calculations underlying such determination and Developer shall complete the Gravity Line Improvement within six months of the later of (a) the date on which written notice of such determination is given by the City Engineer to Developer, or (b) the date of City's issuance of a certificate of occupancy for the first Building.

2. Reimbursement of Costs From Future Developments. Because the Gravity Line Improvement is intended to benefit Future Developments, Developer shall be entitled to reimbursement from such Future Developments. The City shall require, through conditions of approval or other mechanisms, each Future Development to reimburse Developer its fair share of Developer's actual approved costs (inclusive of design and outside management costs) of construction of the Gravity Line Improvement (the "Gravity Line Improvement Costs"). The fair share contribution obligations of the Developer and each Future Development for the Gravity Line Improvement Costs will be determined in the same manner as such obligations are determined for the Lift Station Upgrades in Section III.F.2 above (such that the parties shall apply the formulas and impose the obligations as set forth under the applicable scenarios set forth in that section), except for purposes of this calculation, each reference to "Lift Station Upgrade" will be substituted with "Gravity Line Improvement" and each reference to "Sierra Point Lift Station" will be substituted with "10" Gravity Line."

3. Change In Requirements To Gravity Line Improvement Due To Future Developments. In the event Developer has not yet completed construction of the Gravity Line Improvement and the City determines that as a result of a Future Development, improvements to the 10" Gravity Line other than the Gravity Line Improvement are required to meet the anticipated sewer demand for Sierra Point, Developer will cooperate with the City and the Future Development to construct and/or to contribute financially to construct the necessary improvements to the 10" Gravity Line (or if applicable, to alter its partially completed Gravity Line Improvement to meet the new requirements) in lieu of Developer's requirement to construct the Gravity Line Improvement; provided, that such new improvements or substitute requirements shall not delay the development of the Project nor increase Developer's costs above what Developer would have borne as Developer's Share for the Gravity Line Improvement Costs. Subject to the limitations contained in the immediately preceding sentence, Developer's contribution under this Section G.3 would be calculated as follows:

$$\text{Developer's Contribution} = \frac{0.336\ \text{mgd}}{\text{Total Anticipated Increase in Flow}^*} \times \text{Cost of Improvements}^*$$

*Gravity Line - Revised

where the asterisk: "Gravity Line – revised" refers to the required improvements to the 10" Gravity Line in lieu of the Gravity Line Improvement.

Developer will pay its contribution (as calculated above) within 30 days if the Developer has previously been issued its first or subsequent building permit, or within 30 days of City's first issuance of a building permit to Developer.

I. Acquisition of Access and Easements. In order to facilitate the implementation of the mitigation measures required by the Final EIR, the City agrees to assist Developer in acquiring any right-of-ways, access, easements or properties necessary for the satisfaction and completion of any off-site improvements required by the Final EIR in the event Developer is unable to acquire such right-of-ways, access, easements or properties or is unable to secure the necessary agreements with the applicable property owners for such right-of-ways, access, easements or properties. To the extent the off-site improvements are located on property owned or otherwise controlled by the City, the City agrees to provide without charge to the Developer an encroachment permit or other right of entry necessary to complete such improvements, and agrees that such authorization will be provided in a timely manner so as not to delay Developer's construction of improvements or occupancy of any of its Buildings.

II. REIMBURSEMENT PROVISIONS.

Where Developer is entitled to reimbursement from Future Development under any of the provisions of Part I of this Exhibit, such reimbursement shall be determined, collected and remitted as follows:

A. Upon completion of the work for which reimbursement is claimed by Developer and acceptance of such work by the City Engineer, Developer shall furnish to City a detailed certification (the "Cost Certification") of all construction costs incurred by Developer for such work, including the cost of design, engineering, plan check or inspection services provided by City, permit fees and construction management services provided by outside contractors retained by Developer. The cost certification shall be supported by such contracts, invoices, and other documentation as City may reasonably require to verify the accuracy of all costs claimed by Developer.

B. Upon approval of the Cost Certification by the City Engineer (which approval shall be limited to the City verifying that the costs are accurate and properly includable as reimbursable costs), City and Developer shall execute an Addendum to this Agreement to confirm the final, approved, Cost of Improvements.

C. Upon submittal of a completed application for a Future Development which may be obligated to pay a Reimbursement to Developer, City shall notify Developer of such fact and provide Developer a brief description of the proposed Future Development. Additional public records pertaining to such Future Development will be furnished to Developer upon request.

D. The City will notify Developer of the specific values for the reimbursement formulas set forth in Sections I.G and I. H above, and the City will provide the Developer an opportunity to review the reimbursement calculation to ensure compliance with the formulas set forth in this Agreement.

E. City will require the Future Development to pay the proportionate share of the Reimbursement allocated to a Future Development at the time the first building permit is issued for construction of the Future Development, or any portion thereof, and in any case, City will collect such proportionate share before the City issues a certificate of occupancy for such Future Development, or any portion thereof.

F. Developer's entitlement to Reimbursement from Future Development for the Cost of Improvements, as determined under Section I of this Exhibit C, shall be effective for a term of twenty (20) years from the date of final acceptance by the City of the particular improvements for which reimbursement is claimed.

G. Nothing herein shall require the City to grant a development approval for any Future Development, nor shall this Agreement limit in any way the authority of the City to impose conditions or exactions upon Future Development in addition to the reimbursement condition described in this Agreement. The City shall be relieved of its obligation under this Agreement to collect the Reimbursement to Developer if the City is legally prohibited from doing so under any state or federal law, regulation, or court decision.

EXHIBIT D
Project Schedule

EXHIBIT E
Insurance Requirements For Developers

The Developer shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Developer, its contractors, agents, representatives, or employees. Unless otherwise expressly approved in writing by the City, such insurance shall conform with the following specifications:

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, code 1 (any auto).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Minimum Limits of Insurance

The Developer shall maintain limits no less than:

1. General Liability (including operations, products and completed operations): $2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: $2,000,000 per accident for bodily injury and property damage.

3. Employer's Liability: $2,000,000 per accident for bodily injury or death.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers, or the Developer shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain. the following provisions:

1. The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Developer; and with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Developer's or the Developer's contractor's insurance policy, or as a separate owner's policy (CG 20 10 11 85 or its equivalent).

2. For any claims related to this project, the Developer's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Developer's insurance and shall not contribute with it.

3. The Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after fifteen (15) days' prior written notice has been given to the City.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by the City.

Verification of Coverage

The Developer shall furnish the City with original certificates of insurance or endorsements evidencing coverage required by these specifications. The certificates or endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates or endorsements are to be in form and substance satisfactory to the City and shall be received and approved by the City before work commences. At the request of the City, the Developer shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.