

# *City of Brisbane*

## *Agenda Report*

TO: Mayor and City Council

FROM: Hal Toppel, City Attorney

SUBJECT: Development Agreement for Sierra Point Office Project

DATE: For Council Meeting on January 17, 2012

### **City Council Goals:**

To promote economic development that stabilizes and diversifies the tax base.  
To develop plans and pursue opportunities to protect natural resources.

### **Purpose:**

The purpose of the Development Agreement is to implement the agreement between the applicant and the City, as set forth in City Council Resolution No. 2011-40, for the project to be constructed in compliance with the LEED Gold standard, with land development approvals having a term of 10 years.

### **Recommendation:**

Introduce Ordinance No. 568, approving a Development Agreement for Assessor's Parcel Number 007-165-020 (Sierra Point Office Project).

### **Background and Discussion:**

In 2008, the City granted land use approvals for development of an office project on the vacant land at 3000-3500 Marina Boulevard in Sierra Point. The approvals consisted of a design permit, use permit, variance, and tentative parcel map approval. In 2011, the applicant applied for extension of the zoning approvals and these applications were denied by the Planning Commission. The applicant then filed an appeal to the City Council and on August 1, 2011, the Council adopted Resolution No. 2011-40 reversing the decision of the Planning Commission and granting the extensions. As part of the appeal process, the applicant offered to construct the project in accordance with the LEED Gold standard and in exchange for this added environmental benefit, the Council indicated its willingness to enter into a development agreement providing for extended expiration dates on all of the land use approvals. The proposed Development Agreement represents the implementation of this understanding between the applicant and the City Council.

Development Agreements are authorized by State law and represent contracts voluntarily negotiated between the developer and the City. The main benefit to the developer is that vested rights to proceed with the approved project are granted and the approvals would not be affected by subsequent changes in the City's land use policies as reflected in the General Plan or Zoning Regulations. In addition, the land use approvals can be given a longer effective period equal to the term of the development agreement - as being done in this case. In return for the additional rights granted by the development agreement, the City receives certain benefits that are negotiated with the developer, typically of a kind that could not be imposed as part of the normal development approval process. In this case, the City is receiving a project built to an environmental standard beyond that which would be required under the City's Green Building Ordinance or any other applicable building regulations.

This situation is rather unusual since the project itself has already been approved by the City Council through the adoption of Resolution No. 2011-40, and has received a full environmental analysis under CEQA. Consequently, the various land development approvals are not being re-visited by the City Council. The proposed development agreement will incorporate all of the approvals as previously granted and none of these approvals will be modified, with the important exception of the requirement to comply with the LEED Gold standard. The other modification to the existing approvals provided by the development agreement will be to extend the expiration date of such approvals for a term of 10 years from the Effective Date of the agreement (which will be the date on which Ordinance No. 568 is adopted by the City Council).

Although a development agreement itself is a contract between the developer and the City, it can only be approved by the adoption of an ordinance. As in the case of a zoning ordinance, an ordinance approving a development agreement must first be considered by the Planning Commission, which makes a recommendation to the City Council. A public hearing on the proposed ordinance is conducted by both the Planning Commission and the City Council.

The proposed Ordinance and Development Agreement were considered by the Planning Commission at its regular meeting on December 8, 2011. By unanimous vote, the Commission adopted Resolution No. DA-1-11, recommending to the City Council that the proposed Ordinance be adopted.

**Fiscal Impact:**

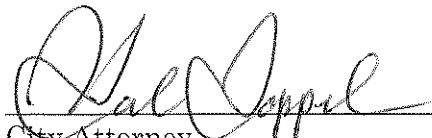
Completion of the project will result in increased revenue to the City in the form of higher property taxes on the site and business license taxes from the occupants.

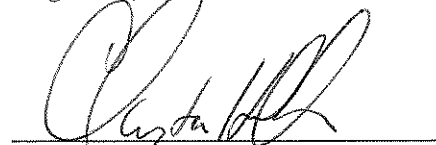
**Measure of Success:**

Completion of the project in accordance with the requirements of the land development approvals and the terms of the Development Agreement.

**Attachments:**

1. Proposed Ordinance No. 568, with proposed Development Agreement attached as Exhibit A.
2. Minutes of Planning Commission meeting on December 8, 2011
3. Planning Commission Resolution No. DA-1-11, adopted on December 8, 2011.
4. Mitigated Negative Declaration for the project.
5. City Council Resolution No. 2011-40, adopted on August 1, 2011.

  
\_\_\_\_\_  
City Attorney

  
\_\_\_\_\_  
City Manager

## ORDINANCE NO. 568

### AN ORDINANCE OF THE CITY OF BRISBANE APPROVING A DEVELOPMENT AGREEMENT FOR ASSESSOR'S PARCEL NUMBER 007-165-020 (Sierra Point Office Project)

**WHEREAS**, Section 65864 *et. seq.* of the California Government Code and Resolution No. 88-10 adopted by the Brisbane City Council authorize the City to enter into a development agreement with any person having a legal or equitable interest in real property for the development of that property; and

**WHEREAS**, SIERRA POINT, LLC, a California limited liability company ("Developer") is the owner of vacant land located on the northwesterly side of Marina Boulevard, easterly of Highway 101, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-165-020 ("the Property"); and

**WHEREAS**, the City of Brisbane ("City") has granted land use approvals for development of an office project on the Property, consisting of approximately 438,104 square feet of office space in two buildings (8 and 10 stories), a 5-level 1,175 space parking structure, and 211 surface parking spaces ("the Project"), such approvals being identified as Design Permit DP-5-07 (as extended by DP-2-11), Use Permit UP-3-08 (as extended by UP-7-11), Variance V-1-08 (as extended by V-2-11), and Tentative Parcel Map TPM-1-08; and

**WHEREAS**, a proposed Development Agreement for the Project has been prepared and notice of the City's intention to consider adoption of such agreement was given in accordance with the requirements of California Government Code Section 65867; and

**WHEREAS**, pursuant to the California Environmental Quality Act, the City approved a Mitigated Negative Declaration for the Project, determining that all of the potential adverse environmental impacts associated with the Project either were less than significant or would be reduced to less than significant levels after mitigation; and

**WHEREAS**, on December 8, 2011, following the conduct of a duly noticed public hearing, the Brisbane Planning Commission adopted Resolution No. DA-1-11, recommending to the City Council that the draft development agreement be adopted; and

**WHEREAS**, the proposed Development Agreement between the City and Developer was presented to the City Council for consideration, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; and

**WHEREAS**, on January 17, 2012, the City Council conducted a duly noticed public hearing on the proposed Development Agreement, at which time any person interested in the matter was given an opportunity to be heard; and

**WHEREAS**, the City Council has considered the staff reports, the minutes, proceedings and recommendations of the Planning Commission, and the oral and

documentary evidence presented at the public hearing and has determined that it would be in the best interest of the City to enact the Development Agreement,

**NOW, THEREFORE, the City Council of the City of Brisbane hereby ordains as follows:**

**SECTION 1:** The City Council finds that entering into the Development Agreement with Sierra Point, LLC, in the form attached hereto as Exhibit A, is consistent with the Brisbane General Plan and the Brisbane Zoning Ordinance and will provide substantial public benefits beyond the exactions for public improvements that would be required under the normal development review process.

**SECTION 2:** The City Council further finds that the environmental impacts of the Project have been fully and completely analyzed in the Mitigated Negative Declaration prepared for the Project, and the City Council has considered and approved the Mitigated Negative Declaration before approving the Development Agreement.

**SECTION 3:** The Development Agreement attached hereto as Exhibit A is hereby enacted and adopted.

**SECTION 4:** The City Council hereby authorizes and directs the Mayor to execute the Development Agreement for and on behalf of the City.

**SECTION 5:** This ordinance shall take effect thirty (30) days from the date of its adoption.

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Harold S. Toppel, City Attorney

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identified as Design Permit DP-5-07, Use Permit UP-3-08, Variance V-1-08, and Tentative Parcel Map TPM-1-08. The configuration of the Project is generally shown on the Site Plan attached hereto as **Exhibit "B"** and made a part hereof.

E. The Tentative Parcel Map was scheduled to expire on or about May 4, 2011, but was automatically extended for an additional two years by the enactment of Government Code Section 66452.22, and is now scheduled to expire on or about May 4, 2013, unless further extended. The Use Permit, Variance and Design Permit were scheduled to expire on May 4, 2011. As a result, Developer applied for extensions of the Design Permit, the Use Permit, and the Variance, such applications being identified as Design Permit DP-2-11, Use Permit UP-7-11 and Variance V-2-11. Following a denial of the extension applications by the Brisbane Planning Commission, Developer filed a timely appeal from this decision to the Brisbane City Council.

F. On July 18, 2011, the Brisbane City Council conducted a hearing on the appeal and following the conclusion thereof, on August 1, 2011, the City Council adopted Resolution 2011-40 granting the appeal and approving an extension of the Design Permit, the Use Permit and the Variance, with certain understandings between the parties. Developer agreed to construct the Project in accordance with LEED Gold standards, and the City Council agreed to negotiate a development agreement with Developer providing for further extension of all the existing and subsequent approvals for a period of time not exceeding ten (10) years from the effective date of such development agreement. This Agreement is the development agreement contemplated by the Parties.

G. 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.

H. On December 8, 2011, 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, is compatible with the uses authorized in and the regulations prescribed for the Sierra Point Commercial District; 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. DA-1-11, recommending to the City Council that Ordinance No. 568 approving this Development Agreement be adopted.

I. On January 17, 2012, the City Council held 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. Accordingly, on January 17, 2012, 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. **Applicable Law** shall have the meaning set forth in Section 3.1 of this Agreement.
- 1.3. **City** means the City of Brisbane
- 1.4. **City Council** means the City Council of the City of Brisbane.
- 1.5. **Conditions of Approval** shall have the meaning set forth in Section 1.12 of this Agreement.
- 1.6. **Consistent New City Law(s)** shall have the meaning set forth in Section 4.1 of this Agreement.
- 1.7. **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" also includes the most recent version of the LEED Gold standard in effect as of the time Developer submits an application for a building permit to construct any portion of the Project.
- 1.8. **Design Guidelines** shall have the meaning set forth in Recital Paragraph C of this Agreement.
- 1.9. **Developer** means SIERRA POINT, LLC, a California limited liability company and those successors in interest (Transferees, etc.) set forth in Section 7 of this Agreement.
- 1.10. **Development Agreement Procedures** shall have the meaning set forth in Recital Paragraph A of this Agreement.
- 1.11. **Enacting Ordinance** means Ordinance No. 568, adopted by City Council on \_\_\_\_\_, approving this Agreement. This Agreement shall constitute a part of the Enacting Ordinance as if incorporated therein in full.



**1.12. 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.

**1.13. Existing Approvals** for the Project consist of the following (and their Conditions of Approval):

- (a) The Mitigated Negative Declaration, including the Water Supply Assessment and the Mitigation Monitoring and Reporting Program;
- (b) Tentative Parcel Map TPM-1-08.
- (c) Design Permit DP-5-07/DP-2-11.
- (d) Use Permit UP-3-08/UP-7-11.
- (e) Variance V-1-08/V-2-11.

The Conditions of Approval to the Existing Approvals consist of the Conditions of Approval for Tentative Parcel Map TPM-1-08, attached as Exhibit "A" to Planning Commission Resolution No. TPM-1-08, adopted on February 26, 2009, as ratified and approved by the City Council in Resolution No. 2009-14, adopted on May 4, 2009; and the Conditions of Approval for Design Permit DP-5-07/DP-2-11, Use Permit UP-3-08/UP-7-11 and Variance V-1-08/V-2-11, attached as Exhibit "A" to City Council Resolution No. 2011-11 adopted on August 1, 2011.

**1.14. General Plan** means the General Plan of the City of Brisbane, including text and maps

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

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

**1.17. 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.

**1.18. LEED** means Leadership in Energy and Environmental Design.

**1.19. 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, Zoning Ordinance, and the Design Guidelines. Ordinances do not include Construction Standards.

**1.20. Planning Commission** means the Planning Commission of the City of Brisbane.

**1.21. 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 Applicable Law.

**1.22. Project Approvals** refers collectively to the Existing Approvals and the Subsequent Project Approvals (as defined in Section 3.3).

**1.23. Property or Project Site** shall have the meaning set forth in Recital Paragraph B of this Agreement.

**1.24. Subsequent Project Approvals** means all Project Approvals that may be issued by City after the Effective Date of this Agreement, as defined in Section 3.3.

## **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, unless sooner terminated or extended as hereinafter provided. Notwithstanding any provisions to the contrary that may be contained in the City's Subdivision or Zoning Ordinances, the Project Approvals shall remain in full force and effect during the Land Use Term of this Agreement and any extensions thereof.

**2.3. Extensions Under State Law.** In the event any or all of the Project Approvals are extended beyond the term of this Agreement pursuant to any automatic extensions granted by a State Law enacted subsequent to the Effective Date of this Agreement, the extended expiration date provided by State Law shall be controlling.

## **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 in accordance with the terms and conditions of this Agreement, the Governing Ordinances, the Project Approvals (including their Conditions of Approval), Consistent New City Law(s) (as defined in Section 4.1 of this Agreement), and the applicable Construction Standards (collectively, the "Applicable Law"). City shall have the right to regulate development and use of the Project Site in accordance

with the Applicable Law. The Applicable Law 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 Compliance with LEED Gold Standard.** In addition to the renewable energy measures described in Paragraph "U" of the Conditions of Approval, Developer agrees to construct the Project in compliance with the most recent version of the LEED Gold standard in effect as of the time Developer submits the first application for a building permit for any portion of the Project. In all other respects, the development of the Project shall be governed by the City's Green Building Ordinance as set forth in Chapter 15.80 of the Brisbane Municipal Code.

**3.3. 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 Applicable Law 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 Applicable Law 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.

(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 Applicable Law.

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

**3.5. 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. City will cooperate with Developer, at no cost to City, in Developer's efforts to obtain such permits and approvals and City shall, from time to time (at the request of Developer), seek to enter into binding agreements with any such

other entity as may be necessary to ensure the timely availability of such permits and approvals to Developer, provided such permits and approvals are mutually determined by City and Developer to be reasonably necessary or desirable, and are consistent with the Applicable Law. In the event that any such permit or approval is not obtained within three (3) months from the date application is deemed complete by the appropriate entity, and such circumstance materially deprives Developer of the ability to proceed with development of the Property or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of Developer or City, Developer and City shall meet and confer with the objective of attempting to mutually agree on alternatives, Subsequent Project Approvals, and/or an amendment to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

**3.6. 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, its officials, officers, employees and volunteers as additional insureds. Such insurance policies shall comply with City's "Insurance Requirements For Developers" attached hereto as **Exhibit "C"** 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's failure to maintain any such insurance.

#### **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 Applicable Law, 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 Applicable Law ("Consistent New City Law(s)"). Such Consistent New City Law(s) shall be considered to conflict with the Applicable Law if they:
  - (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 obligation to construct or to fund the construction of public improvements beyond the obligations imposed by the Applicable Law.

The above list of actions is not intended to be comprehensive, but is illustrative of the types of actions that would conflict with the Applicable Law. 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 the Applicable Law shall apply to the Project or the Project Approvals. Except for the Construction Standards governing construction, building, fire, plumbing, electrical and life safety, 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 the Applicable Law, 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 LEED Gold standard), 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 Consistent New City Law(s).
- (c) If City believes that it has the right under this Agreement to impose/apply a Consistent New City Law on the Property/Project, it shall send written notice to Developer of that City position ("Notice of New City Law(s)"). Such Notice of New City Law(s) shall contain the following sentence somewhere in its text: "This is a Notice of New City Law(s) provided pursuant to Section 4.1(c) of the Sierra Point Development Agreement." Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with the Applicable Law, Developer may send written notice to City within twenty (20) days of Developer's receipt of City's Notice of New Law ("Objection to New City Law(s)"). If no Objection to New City Law(s) is received by City within such period of time, Developer shall be deemed to have acknowledged that no conflict exists.

In the event Developer sends a timely notice to City of its Objection to New City Law(s), such notice shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law(s) to the Property. City shall respond to Developer's Objection to New City Law(s) ("City Response") within thirty (30) days of receipt of said Developer Objection to New City Law(s). Thereafter, the Parties shall meet and confer within twenty (20) days of the date of Developer's receipt of the City Response and shall continue to meet over the next thirty (30) days ("Meet and Confer Period") with the objective of arriving at a mutually acceptable solution to this disagreement. The New City Law(s) shall not be applied to the Property until the dispute over the applicability of the New City Law(s) is resolved. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to impose/apply the New City Law(s) to the Property in question, then Developer shall have a period of thirty (30) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 30-day statute of limitations regarding Developer's right to judicial review of the New City Law(s) shall commence upon Developers receipt of City's determination (following the above-described process). If upon conclusion of judicial review of the New City Law(s) (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law(s), such New City Law(s) shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law(s) (e.g., City return fees, return dedications, etc.).

Any of the time limits set forth in this Subsection 4.1(c) may be extended by mutual agreement of the Parties and consistent with good faith and fair and expeditious dealing between the Parties as described in Section 14.1.

**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 and other obligations 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, the Applicable Law fully sets forth all of Developer's obligations pertaining to the exactions and other obligations 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 and other obligations that could be required for the Project Approvals and City shall not require from Developer any additional exactions and other obligations 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 the Applicable Law.
- (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 the Applicable Law.
- (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's 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, any Project Approval, or the sufficiency of environmental review under CEQA; 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 at any time, upon notice to City but without the necessity of any approval by the City, 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. In addition, 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 (ii) any member of Developer or any subsidiary, parent or affiliate of any such member, or (iii) any successor or successors to Developer 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. A default by any Transferee shall only affect that portion of the Property/Project owned by such Transferee and shall not cancel or diminish in any way Developer's rights hereunder with respect to the portion of the Property/Project not owned by such Transferee.

**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: (i) 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; and (ii) no amendment of this Agreement shall be required in connection with City processing and approval of any Subsequent Project Approval.

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

Developer: Sierra Point, LLC  
Attn: Don Little  
4900 Hopyard Rd., Suite 100  
Pleasanton, CA 94588  
Telephone: (925) 468-4100  
Fax: (925) 463-4824

And

Sierra Point, LLC  
c/o Founders Properties  
Attn: President  
10350 Bren Road W  
Minnetonka, MN 55343

With copy to: Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attn: Michael Patrick Durkee, Esq.  
200 Pringle Avenue, Suite 300  
Walnut Creek, CA 94596  
Telephone: (925) 943-5551  
Fax: (925) 943-5553

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 Applicable Law. 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 sixty (60) 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 sixty (60) 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 sixty (60) 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 sixty (60) 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, the parties hereby agree to cooperate in defending said action or proceeding. Developer agrees to diligently defend any such action or proceeding and to bear the litigation expenses of defense, including attorneys' fees. 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. Good Faith and Fair and Expeditious Dealing.** In all dealings and transactions between the Parties that may be conducted pursuant to this Agreement and in the performance of their respective duties and obligations under this Agreement, the parties shall act toward each other and execute the tasks necessary or desirous to the processing contemplated by this Agreement in a fair, diligent, best efforts, expeditious and reasonable manner, and neither Party shall take any action that will prohibit, impair, or impede the exercise by the other Party of its rights and obligations secured through this Agreement.

**14.2. 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.

**14.3. Severability.** Invalidity 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.

**14.4. 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** 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 Spediacci, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Harold S. Toppel, City Attorney

**DEVELOPER:**

SIERRA POINT, LLC,  
a California 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

Real property in the City of Brisbane, County of San Mateo, State of California, described as follows:

PARCEL 1, AS DESIGNATED ON THE MAP ENTITLED "PARCEL MAP", CITY OF BRISBANE, SAN MATEO COUNTY, CALIFORNIA, WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON FEBRUARY 27, 1987 IN BOOK 58 OF PARCEL MAPS AT PAGES 76, 77 AND 78.

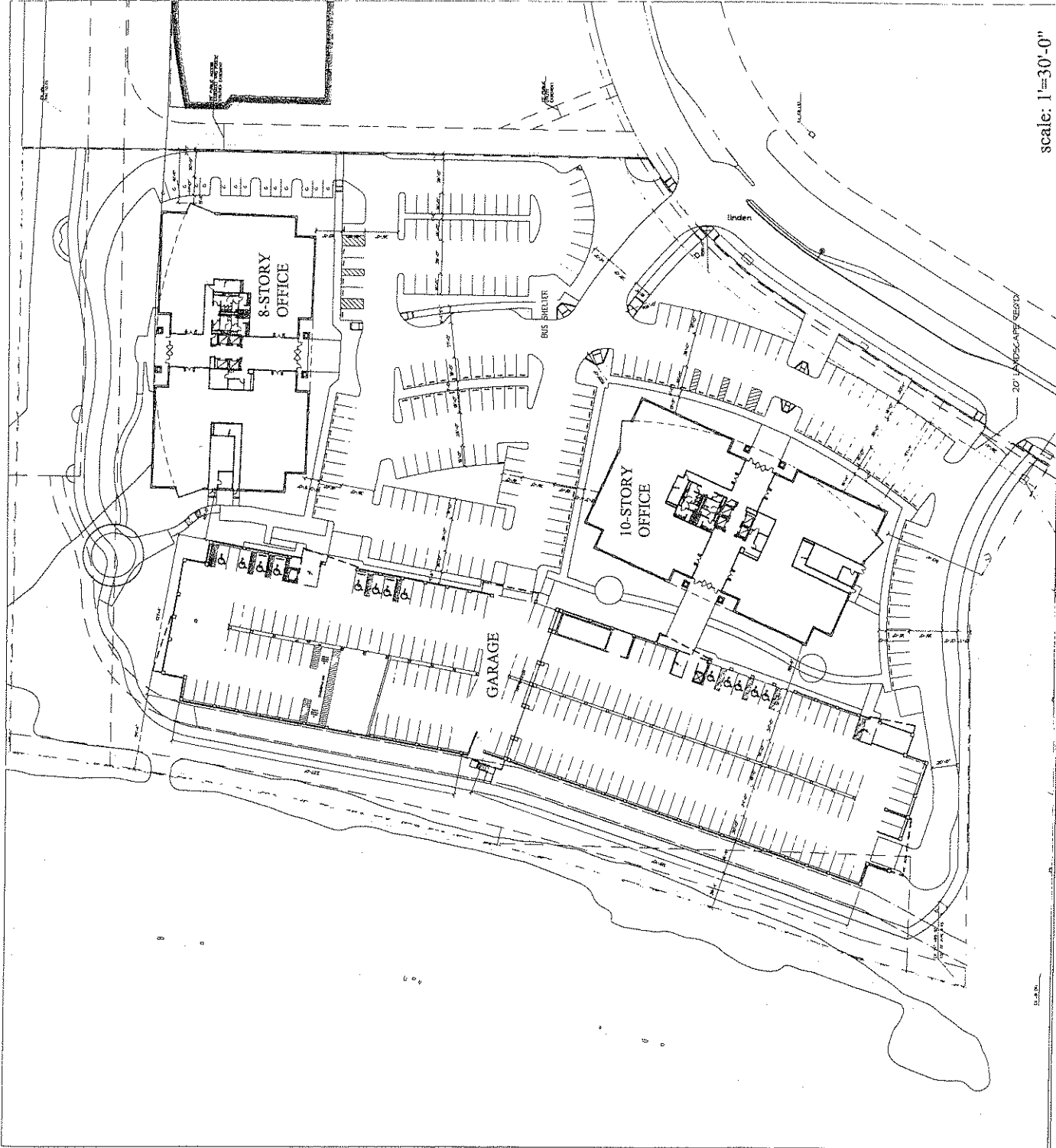
EXCEPTING ALL MINERALS AND ALL MINERAL RIGHTS OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OIL AND GAS AND RIGHTS THERETO, TOGETHER WITH THE SOLE, EXCLUSIVE AND PERPETUAL RIGHT TO EXPLORE FOR, REMOVE AND DISPOSE OF SAID MINERALS BY ANY MEANS OR METHODS SUITABLE TO THE GRANTOR, ITS SUCCESSORS AND ASSIGNS, INCLUDING LATERAL OR SLANT DRILLING, BUT WITHOUT ENTERING UPON OR USING THE SURFACE OF THE LANDS HEREBY CONVEYED, AND IN SUCH MANNER AS NOT TO DAMAGE THE SURFACE OF SAID LANDS OR ANY BUILDING NOR THEREON OR HEREAFTER ERECTED THEREON OR THE SUBSTRUCTURE OF ANY SUCH BUILDING, OR TO INTERFERE WITH THE USE THEREOF BY THE GRANTEE, ITS SUCCESSORS AND ASSIGNS, AS EXCEPTED IN THE FOLLOWING DEEDS TO UTAH CONSTRUCTING & MINING CO., A CORPORATION, PREDECESSOR IN INTEREST TO THE VESTEE HEREIN:

A. FROM MAUDE LOUISE PHILLIPS, RECORDED SEPTEMBER 14, 1959 IN BOOK 3670 OF OFFICIAL RECORDS AT PAGE 624, DOCUMENT NO. 86272-R.

B. FROM JOHN F. WILLCOX, ALSO KNOWN AS JOHN FREDERICK WILLCOX RECORDED SEPTEMBER 14, 1959 IN BOOK 3670 OF OFFICIAL RECORDS AT PAGE 625, DOCUMENT NO. 86273-R.

C. FROM MARITA CLARKE, RECORDED SEPTEMBER 14, 1959 IN BOOK 3670 OF OFFICIAL RECORDS AT PAGE 626, DOCUMENT NO. 86274-R.

APN: 007-165-020-4 and JPN: 106-009-000-12 T and 110-054-000-01 T



12/05/08  
09/21/07



a Development of Opus West Corporation

# OPUS CENTER SIERRA POINT

Brisbane, California

EXHIBIT B



## Site Plan

Hoover Associates

### STATISTICS

BLDG AREA	
10-STORY OFFICE	25,860 sf
8-STORY OFFICE	244,096 sf
TOTAL BLDG AREA	269,956 sf
PARKING	
ON GRADE	211 (INCLUDES 14 COMPACT STALLS)
GARAGE PKG	1,175
TOTAL	1,386 (INCLUDES 25 CARS HANDICAP STALLS)

## **EXHIBIT C**

### **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.

draft  
BRISBANE PLANNING COMMISSION  
Action Minutes of December 8, 2011  
Regular Meeting  
(excerpt)

NEW BUSINESS

3. **PUBLIC HEARING: 3000-3500 Marina Boulevard;** Development Agreement DA-1-11; Adoption of Ordinance Approving Development Agreement for Sierra Point Office Project; Don Little Group, applicant; Sierra Point LLC, owner; APN 007-165-020

City Attorney Toppel presented the agenda report.

Acting Chairperson Parker opened the public hearing. There being no one else wishing to speak, the public hearing was closed on a motion by Acting Chairperson Parker, seconded by Commissioner Cunningham and passed, 4-0 (Chairman Munir absent).

Commissioner Reinhardt expressed his support for raising the LEED standard for this project. He made the motion to adopt recommended Resolution DA-1-11. The motion was seconded by Commissioner Cunningham and adopted, 4-0 (Chairman Munir absent).

**RESOLUTION NO. DA-1-11**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY  
OF BRISBANE RECOMMENDING TO THE CITY COUNCIL  
ADOPTION OF AN ORDINANCE APPROVING A DEVELOPMENT  
AGREEMENT FOR ASSESSOR'S PARCEL NUMBER 007-165-020**

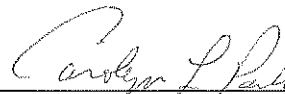
**WHEREAS**, a proposed Ordinance of the City of Brisbane Approving A Development Agreement For Assessor's Parcel Number 007-165-020, with a proposed Development Agreement attached thereto as Exhibit "A", has been presented to the Planning Commission for consideration and recommendation to the City Council; and

**WHEREAS**, on December 8, 2011, the Planning Commission conducted a public hearing on the proposed ordinance, at which time any person interested in the matter was given an opportunity to be heard; and

**WHEREAS**, the Planning Commission has found and determined that the proposed Development Agreement between the City of Brisbane and Sierra Point, LLC, pertaining to the office project to be constructed on the site located at 3000-3500 Marina Boulevard, identified as Assessor's Parcel Number 007-165-020, is consistent with the Brisbane General Plan; and

**WHEREAS**, the Planning Commission has further found and determined that the proposed project contemplated by the Development Agreement does not create any new or increased adverse environmental impacts that would require a modification of the Mitigated Negative Declaration or the Mitigation Monitoring and Reporting Program for the project, as previously approved by the City,

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning Commission hereby recommends to the Brisbane City Council that the proposed Ordinance approving a Development Agreement for APN 007-165-020 be adopted.



Carolyn Parker, Acting Chairperson

I hereby certify that the foregoing Resolution No. DA-1-11 was duly and regularly adopted by the Brisbane Planning Commission at a regular meeting thereof held on December 8, 2011, by the following vote:

AYES: Cunningham, Do, Reinhardt, Parker  
NOES: None  
ABSENT: Munir



JOHN SWIECKI  
Community Development Director

## MITIGATION MONITORING AND REPORTING PROGRAM

This Mitigation Monitoring and Reporting Program (MMRP) was formulated based on the findings of the Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the Opus Office Center Project. This MMRP is in compliance with Section 15097 of the *CEQA Guidelines*, which requires that the Lead Agency "adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects." The MMRP lists mitigation measures recommended in the IS/MND and identifies mitigation monitoring requirements.

Table 1 presents the mitigation measures identified for the proposed project. Each mitigation measure is numbered according to the topical section to which it pertains in the IS/MND. As an example, Mitigation Measure VIS-1 is the first mitigation measure identified in the IS/MND. The column entitled "Mitigation Responsibility" identifies the party responsible for carrying out the required actions. The columns entitled "Monitoring/Reporting Agency" and "Monitoring Schedule" identify the party ultimately responsible for ensuring that the mitigation measure is implemented and the approximate timeframe for the oversight agency to ensure implementation of the mitigation measure.



Table 1: Mitigation Monitoring and Reporting Program

Mitigation Measures		Mitigation Responsibility	Monitoring/Reporting Agency	Monitoring Schedule
<b>I. Aesthetics</b>				
VIS-1: As a condition of project approval, a photometric analysis and lighting plan shall be prepared for the proposed project. This analysis shall include an assessment of potential lighting impacts based on the height, location, light fixtures, direction and illumination intensity and hours of operation. This analysis shall identify any potential light spill beyond the site boundaries, including light that could impact water vessel or aircraft navigation. The lighting plan shall be designed to control light energy and ensure that exterior lighting is directed downward and away from adjacent streets and buildings in a manner designed to minimize off-site light spillage and reduce impacts to water vessel and aircraft navigation. The lighting plan shall be submitted to the Planning Department and City Engineer for final approval prior to approval of a building permit.		Project Applicant	Brisbane Planning Department/City Engineer	Prior to issuance of building permit
<b>II. Agricultural Resources</b>				
<i>No mitigation required</i>				
<b>III. Air Quality</b>				
AIR-1: Consistent with guidance from the BAAQMD, the following actions shall be required of construction contracts and specifications for the project. The following controls shall be implemented at all construction sites:		Project Applicant/ Construction Manager	Brisbane Public Works Department	Periodically during demolition, grading and construction activities
<ul style="list-style-type: none"> <li>Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers to control dust;</li> <li>Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;</li> <li>Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites;</li> <li>Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality;</li> <li>Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets;</li> <li>Apply non-toxic soil stabilizers to inactive construction areas;</li> <li>Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.);</li> <li>Limit traffic speeds on unpaved roads to 15 mph;</li> <li>Install sandbags or other erosion control measures to prevent silt runoff to public roadways;</li> <li>Replant vegetation in disturbed areas as quickly as possible.</li> </ul>				

Table 1 *Continued*

Mitigation Measures	Mitigation Responsibility	Monitoring/Reporting Agency	Monitoring Schedule
<p><b>AIR-1 Continued</b></p> <ul style="list-style-type: none"> <li>Install base rock at entryways for all exiting trucks, and wash off the tires or tracks of all trucks and equipment in designated areas before leaving the site; and</li> <li>Suspend excavation and grading activity when sustained wind speeds exceed 25 mph. Sustained wind speed shall be determined by averaging observed values over a two-minute period. Wind monitoring by the construction manager shall be required at all times during excavation and grading activities.</li> </ul> <p><b>AIR-2:</b> Implement Mitigation Measure AIR-1 to reduce construction-period air quality impacts to sensitive receptors.</p>	Project Applicant/Construction Manager	Brisbane Public Works Department	Periodically during demolition, grading and construction activities
<b>IV. Biological Resources</b>			
<p><b>BIO-1a:</b> Prior to initiation of grading and construction activities, a temporary construction fence shall be placed along the western edge of the project site along the row of toyon trees to restrict access of construction personnel and equipment into the salt marsh and drainage. A qualified biologist will assist construction personnel in the placement of the construction fencing and will monitor the site periodically during project construction.</p>	Project Applicant/Qualified Biologist	Brisbane Public Works Department	Prior to initiation of grading or construction activities
<p><b>BIO-1b:</b> The project applicant shall construct a permanent fence adjacent to the pedestrian path and Bay Trail along the western and northern edge of the project site to restrict access of humans and dogs into the salt marsh. A qualified biologist shall advise the applicant regarding the location and design of the fence. The applicant shall receive approval of fence design, dimensions and location from BCD and the Planning Department. The upland habitat on the project site should be landscaped with native shrub species such as marsh gum plant, salt grass, California sagebrush, and/or coyote brush to buffer the small marsh from activity on the pathway and provide rails and other marsh birds with shelter during extreme high tides. Such vegetation (e.g., marsh gum-plant) could also provide potential nesting habitat for various species of bird inhabiting the marsh. In the unlikely event that California black rails occur in the salt marsh, the mitigation measures outlined for California clapper rails would also protect black rails. Implementation of this two-part mitigation measure would reduce indirect impacts to California clapper rails to less-than-significant levels.</p>	Project Applicant/Qualified Biologist	Brisbane Planning Department/San Francisco Bay Conservation and Development Commission	Prior to issuance of a certificate of occupancy permit for Phase 1
<p><b>BIO-2a:</b> Conduct pile-driving activities for the proposed project during the non-breeding season of the California clapper rail, September 1 through January 15. Pile-driving during this time frame would not impact the nesting activity of clapper rails if they are present in the small salt marsh adjacent to the project site and would reduce potential indirect impacts to California clapper rails to less-than-significant levels.</p>	Project Applicant/Construction Manager	Brisbane Planning Department/Public Works Department	During the construction period

Table 1 *Continued*

Mitigation Measures	Mitigation Responsibility	Monitoring/Reporting Agency	Monitoring Schedule
BIO-2b: If pile driving cannot be restricted to the non-breeding season (September 1 through January 15), the applicant must develop a plan and schedule for pile driving subject to review and approval by the California Department of Fish and Game (CDFG), the United States Fish and Wildlife Service (USFWS) and City of Brisbane Community Development Director to ensure that the project is in compliance with all applicable state and federal laws and regulations pertaining to protection of the Clapper Rail. The plan may require enhanced protocol level surveys (i.e., protocol survey plus 2 to 3 additional surveys) of the adjacent salt marsh prior to pile driving activities, the establishment of appropriate buffer areas, and the use of pile driving techniques that minimize noise and vibrations. The pile driving plan, schedule and any alternative mitigations or solutions that are developed as a result of early consultations, must be reviewed and approved in writing by the CDFG, USFWS and the City of Brisbane's Community Development Director prior to issuance of a building permit to allow pile driving.	Project Applicant/ Qualified Biologist	Brisbane Planning Department/California Game/U.S. Fish and Wildlife Service	Prior to issuance of a building permit to allow pile driving
BIO-3a: Comprehensive pre-construction surveys for burrowing owl presence shall be conducted no more than 30 days prior to any ground disturbing activities. If ground-disturbing activities are delayed or suspended for more than 30 days after the initial pre-construction surveys, the site shall be re-surveyed. All surveys shall be conducted in accordance with current California Department of Fish and Game (CDFG) burrowing owl survey protocol (CDFG, October 17, 1995). A qualified biologist shall conduct surveys for burrowing owls in all suitable habitats on the site. CDGF requires a report to be prepared and submitted to CDFG at the end of each construction season detailing the results of the pre-construction surveys.	Project Applicant/ Qualified Biologist	Brisbane Planning Department/California Department of Fish and Game	Prior to issuance of grading permit/report completed for surveys
BIO-3b: If burrowing owls are found to be wintering or breeding on the site, a qualified biologist shall implement a routine monitoring program in compliance with the 1995 CDFG protocol. In such an instance, the applicant shall create a mitigation plan in accordance with the 1995 CDFG protocol and shall choose to implement either an avoidance plan or passive relocation plan, subject to approval by CDFG. If an avoidance plan is selected, the applicant shall establish an exclusion zone around each occupied burrow in which no construction related activity shall occur until the burrows are confirmed to be unoccupied. No disturbance shall occur within 160 feet (50 meters) of an occupied burrow during the non-breeding season (September 1 through January 31) and within 250 feet (75 meters) of an occupied burrow during the breeding season (February 1 through August 31). If passive relocation methods are selected by the applicant, they shall be implemented pursuant to CDFG guidelines. All activities shall be coordinated with the CDFG prior to disturbance of occupied burrows.	Project Applicant/ Qualified Biologist	Brisbane Planning Department/California Department of Fish and Game	CDFG clearance required prior to grading/ construction permit issuance for affected areas
BIO-3c: In the unlikely event that burrowing owls are found nesting on the site, if avoidance is selected by the applicant as the mitigation alternative, in accordance with the 1995 CDFG protocol, or as otherwise approved by CDFG, 6.5 acres of suitable habitat, as determined by an experienced wildlife biologist and approved by CDFG, shall be preserved as mitigation for each pair of owls found nesting on-site. A management plan shall be developed for the	Project Applicant/ Qualified Biologist	Brisbane Planning Department/California Department of Fish and Game	Approved mitigation agreement prior to grading/construction permit issuance for affected areas

Table 1 *Continued*

Mitigation Measures	Mitigation Responsibility	Monitoring/ Reporting Agency	Monitoring Schedule
mitigation area and approved by CDFG and the City. Mitigation may include permanent protection of on-site foraging habitat around the burrow of each pair or unpaired burrowing owl, or the permanent protection of habitat at a nearby off-site location acceptable to CDFG, or other plan acceptable to CDFG. If required by CDFG, the mitigation site shall be dedicated in perpetuity as wildlife habitat either through establishment of a conservation easement on the mitigation site or through transfer of ownership of the lands to an appropriate public agency that shall preserve and manage the lands as wildlife habitat.			
<b>BIO-4:</b> If tree removal, grading or construction is scheduled to begin within the breeding season for songbirds (March 1 – August 31), a qualified biologist will conduct surveys on the project site, focusing on the trees to be removed along the Bay Trail, to identify any nesting native bird species. These surveys shall be carried out no sooner than two weeks prior to the start of construction. Impacts to active nests will be avoided by establishing an exclusion zone 25-foot buffer around the active nest. Due to the relatively high levels of local ambient noise and disturbance and the likely acclimation of local nesting birds a 25-foot buffer is deemed adequate to protect nest sites. A qualified biologist will monitor each nest once per week in order to track the status of each nest and inform the project applicant of when a nest area has been cleared for construction. To avoid impacts to birds nesting in the salt marsh and drainage to the west of the project area construction fencing shall be placed along the eastern edge of the fringing vegetation (including the planted toyon) to restrict access of construction personnel and equipment.	Project Applicant/ Qualified Biologist	Brisbane Planning Department/California Department of Fish and Game	Prior to issuance of a grading permit
<b>BIO-5:</b> The project shall comply with conditions of the NPDES Municipal Storm Water permit and Storm Water Pollution Prevention Plan for construction and commercial operations as described in Section VIII, Hydrology and Water Quality.	Project Applicant	Brisbane Planning Department/City Engineer	Prior to issuance of a grading permit
<b>V. Cultural Resources</b>			
<i>No mitigation required</i>			
<b>VI. Geology and Soils</b>			
<b>GEO-1a:</b> All structures shall be designed and constructed in conformance with the most recently adopted California Building Code requirements for seismic design. The City Engineer shall approve all final design and engineering plans.	Project Applicant	City of Brisbane Building Official	Prior to issuance of a building permit

Table 1 *Continued*

Mitigation Measures	Mitigation Responsibility	Monitoring/Reporting Agency	Monitoring Schedule
<u>GEO-1b:</u> As a condition of approval and prior to the issuance of a grading permit, the applicant shall submit a final site-specific, design-level geotechnical investigation, to be prepared by a licensed professional, to the City for review and approval. The geotechnical investigation shall include recommendations for grading, avoidance of settlement, and differential settlement of infrastructure and buildings. The recommendations shall be incorporated into all development plans submitted for the project.	Project Applicant	City Engineer	Prior to issuance of a grading permit
<u>GEO-1c:</u> The applicant shall provide information to prospective building occupants regarding earthquake safety. The information shall include one or more of the following publications: <ul style="list-style-type: none"> <li>• Information obtained from the California Division of Mines and Geology in its 1997 report "Guidelines for Evaluating and Mitigating Seismic Hazards in California" (which can be downloaded from the Division's home page at <a href="http://www.consrv.ca.gov">www.consrv.ca.gov</a>);</li> <li>• "The Commercial Property Owner's Guide to Earthquake Safety," produced by the Seismic Safety Commission (SSC) and available at 1755 Creekside Oaks Drive, Suite 100, Sacramento, CA 95883 or at 916-263-5506); and</li> <li>• "Peace of Mind in Earthquake Country" (Peter Yaney, 1991, Chronicle Books).</li> </ul>	Project Applicant	Planning Department	Ongoing to be demonstrated upon request of Planning Department
<u>GEO-2a:</u> All structures shall be designed and constructed in conformance with the most recently adopted California Building Code requirements for building design in areas undergoing compaction. The Building Official shall approve all final design and engineering plans.	Project Applicant	Brisbane Planning Department/Building Official	Prior to issuance of a building permit
<u>GEO-2b:</u> As required in Mitigation Measure GEO-1b, the applicant shall prepare and submit to the City for final approval a final design-level geotechnical investigation that includes recommendations for avoidance of settlement and placement of fill materials.	Project Applicant	Brisbane Building Official/City Engineer	Prior to issuance of a grading permit
<u>GEO-2c:</u> The final geotechnical investigation shall include an Inspection and Repair Plan to address future settlement of the project site. The Inspection and Repair Plan shall delineate an inspection schedule for storm water conveyances and other utilities (on at least an annual basis) to determine adverse effects of settlement. The plan shall identify responsibility for repair of any affected improvements (e.g., property owner, lessees, or property management company). The inspection results and repairs shall be documented to the City in a biannual report. (See also Mitigation Measure GEO-3, below).	Project Applicant	Brisbane Building Official/City Engineer	Prior to issuance of a grading permit. Ongoing implementation demonstrated via submission of required biannual report
<u>GEO-3:</u> The applicant shall coordinate with the Sierra Point Environmental Management Association to ensure that the Inspection and Repair Plan (see Mitigation Measure GEO-2c) includes provisions for dike inspections and repairs. The dikes shall be inspected at least annually (and immediately following a seismic event) and necessary repairs to ensure stability shall be implemented. All inspections and repairs shall be conducted by or in accordance with the recommendations of a licensed professional engineer.	Project Applicant/Sierra Point Environmental Management Association	City Engineer	Ongoing yearly reports filed with City Engineer

Table 1 *Continued*

Mitigation Measures	Mitigation Responsibility	Monitoring/Reporting Agency	Monitoring Schedule
GEO-4: The applicant shall coordinate with the Sierra Point Environmental Management Association to ensure that the Post-Earthquake Inspection and Corrective Action Plan (Action Plan) is updated to reflect the changes in conditions at the project site since its initial preparation in 1996. The Inspection and Repair Plan (see Mitigation Measure GEO-2c) should work cooperatively with the Action Plan. The revised Action Plan shall be submitted to the City prior to site occupancy.	Project Applicant/Sierra Point Environmental Management Association	City Engineer	Prior to issuance of a certificate of occupancy permit
<b>VII. Hazards and Hazardous Materials</b>			
HAZ-1: Any site development activities must comply with the requirements of the Water Board Order, applicable post-closure SRWCB/CIWMB Title 27 CCR requirements enforced by the LEA, including, but not limited to: ensuring landfill cover and integrity; drainage and erosion control systems; a means to address differential settlement; gas control and monitoring, including installation of a geomembrane (or equivalent system); and development of a post-closure emergency response plan. Construction activities must also comply with San Mateo County requirements for proposed excavation activities on former landfills for worker health and safety, and the requirements of the Brisbane General Plan and other City requirements (Grading Permit, Building Permit).	Project Applicant/Construction Manager	Brisbane Public Works Department	Prior to issuance of a grading permit and full time inspection for all grading and clay cap placement. Full time inspection for placement of below slab geomembrane material, for all pile penetration sealing operations, for placement of all below slab utilities, and for pile cap, grade beam, and floor slab concrete pours.
<b>VIII. Hydrology and Water Quality</b>			
<i>No mitigation required</i>			
<b>IX. Land Use And Planning</b>			
<i>No mitigation required</i>			
<b>X. Mineral Resources</b>			
<i>No mitigation required</i>			
<b>XI. Noise</b>			
NOISE-1: The project shall comply with the following noise reduction measures: <ul style="list-style-type: none"> <li>General construction activities shall be allowed only between the hours of 7:00 a.m. to 7:00 p.m. on weekdays and 9:00 a.m. and 7:00 p.m. on weekends and holidays. Pile driving shall be limited to Monday through Friday 8:00 a.m. to 5:00 p.m. and prohibited on Saturdays and Sundays. Construction outside of these hours may be approved through an exception permit issued by the Planning Director. The exception permit shall include appropriate conditions to minimize noise disturbance of affected hotel, office and commercial uses.</li> <li>All heavy construction equipment used on the project site shall be maintained in good operating condition, with all internal combustion, engine-driven equipment fitted with intake and exhaust mufflers that are in good condition.</li> </ul>	Project Applicant/Construction Manager	Brisbane Public Works Department	Periodically during grading and construction activities

Table I Continued

Mitigation Measures	Mitigation Responsibility	Monitoring/Reporting Agency	Monitoring Schedule
<p><b>AIR-1 Continued</b></p> <ul style="list-style-type: none"> <li>All stationary noise-generating equipment shall be located as far away as possible from neighboring property lines.</li> <li>Post signs prohibiting unnecessary idling of internal combustion engines.</li> <li>The construction manager shall identify and designate a "noise disturbance coordinator" who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints and institute reasonable measures warranted to correct the problem. The noise disturbance coordinator shall report all complaints and resolution thereof to the City via monthly reports. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site.</li> <li>Utilize air compressors that are designated as "quiet" and other "quiet" construction equipment sources where such technology exists.</li> </ul>			
<b>XII. Population And Housing</b>			
<i>No mitigation required</i>			
<b>XII. Public Services</b>			
<i>No mitigation required</i>			
<b>XIII. Recreation</b>			
<i>No mitigation required</i>			
<b>XV. Traffic</b>			
<p><b>TRAF-1:</b> Based on the Second Amendment document, the applicant shall be responsible for modifying the intersection of Sierra Point Parkway and Lagoon Way (#8) by signalizing the intersection (or paying their fair share of these improvements should they have been previously completed), to the satisfaction of the City Engineer in regards to design and the timing of the improvements. This mitigation would allow the intersection to operate at LOS B during the AM and PM peak hours.</p>	Project Applicant	Brisbane Public Works Department/City Engineer	Upon reaching traffic volume thresholds established pursuant to adopted 2 <sup>nd</sup> Amendment to Agreement Concerning Project Approval Documents (2nd Amendment Document). Project applicant to monitor traffic volumes on yearly basis or as otherwise determined necessary by the Public Works Director.
<p><b>TRAF-2:</b> The applicant shall be responsible for installing a signal (or paying their fair share of these improvements should they have been previously completed) at the intersection of Sierra Point Parkway and US 101 NB Ramps (#9), to the satisfaction of the City Engineer in regards to design and the timing of the improvement. This mitigation measure would allow the intersection to operate at LOS C during the AM peak hour and LOS B during the PM peak hour.</p>	Project Applicant	Brisbane Public Works Department/City Engineer	As required by the City Engineer or prior to issuance of certificate of occupancy permit for Phase 2
<p><b>TRAF-3:</b> Based on the Second Amendment document, the applicant shall be responsible for</p>	Project Applicant	Brisbane Public Works	See TRAF-1

Table 1 *Continued*

Mitigation Measures	Mitigation Responsibility	Monitoring/ Reporting Agency	Monitoring Schedule
signalizing the intersection of Sierra Point Parkway and Shoreline Court (#10) and the addition of a second eastbound left-turn lane and the conversion of the northbound through lane to a left-turn lane (or paying their fair share of these improvements should they have been previously completed), to the satisfaction of the City Engineer in regards to design and the timing of the improvement. This mitigation measure would allow the intersection to operate at LOS B during the AM peak hour and LOS C during the PM peak hour.		Department/City Engineer	
<u>TRAF-4:</u> The applicant shall be responsible for mitigating the impacts at the intersection of Bayshore Boulevard and Old County Road (#6) to the satisfaction of the City Engineer. Potential mitigations that would result in a satisfactory LOS include: adding a second southbound left-turn lane, or adding a second eastbound left-turn lane and converting the existing shared-through-left to a through lane; or adding a westbound through lane; and/or adjusting the signal timing. The applicant shall pay their fair share of the approved mitigation measure should it be completed prior to construction of the proposed Opus Office project.	Project Applicant	Brisbane Public Works Department/City Engineer	As required by the City Engineer or prior to issuance of certificate of occupancy permit for Phase 2
<u>TRAF-5:</u> In accordance with CMP requirements, the project applicant shall identify and implement Travel Demand Management (TDM) measures to reduce project impacts and shall ensure that the TDM measures are implemented by the project applicant or tenants, per the approval of the City Engineer regarding the specific measures and the implementation timing. A list of TDM measures are provided in the San Mateo County Final Congestion Management Program. In coordination with the City and prior to issuance of a building permit, the applicant shall prepare and provide the City with a Traffic Reduction Plan that identifies specific TDM measures to be implemented. Specific measures that could be included in the Plan to reduce trips associated with the project are listed below:	Project Applicant	Brisbane Planning Department/County Congestion Management Agency	Prior to issuance of building permit



Table 1 *Continued*

Mitigation Measures	Mitigation Responsibility	Monitoring/ Reporting Agency	Monitoring Schedule
<p><i>TRAF-5 Continued</i></p> <ul style="list-style-type: none"> <li>• Provide for increased frequencies of existing dedicated shuttle service during the peak period to a rail station or residential area; coordinate with Caltrain shuttle services with respect to locations of stops and related amenities;</li> <li>• Participate in City programs (when and if they are available) aimed at reducing vehicular traffic trips;</li> <li>• Provide a location for a dedicated shuttle stop;</li> <li>• Provide secure bicycle parking;</li> <li>• Provide and operate an on-site commute assistance center to allow for one stop shopping for transit and commute alternatives information, preferably staffed with a live person to assist building tenants with trip planning;</li> <li>• Provide subsidized transit passes;</li> <li>• Provide less parking, charge for parking, and offer employees a parking cash-out program; and</li> <li>• Implement an alternate hours workweek program, also known as flextime.</li> </ul>			
<p><i>TRAF-7:</i> The applicant shall provide the amount of parking as required under the parking modification conditional use permit.</p>	Project Applicant	Brisbane Public Works Department/City Engineer	Prior to issuance of certificate of occupancy permit for each phase

Table 1 *Continued*

Mitigation Measures	Mitigation Responsibility	Monitoring/Reporting Agency	Monitoring Schedule
<b>XVI. Utilities And Services</b>			
<b>UTL-1a:</b> As a condition of approval and prior to issuance of building permits, the applicant shall incorporate 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, or pay their fair share as determined by the Public Works Department if the improvement has already been completed. 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.	Project Applicant	Brisbane Public Works Department	Prior to issuance of a building permit
<b>UTL-1b:</b> As a condition of approval and prior to issuance of building permits, an agreement must 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. The applicant shall be responsible for the costs associated with preparation and implementation of the program, or pay their fair share as determined by the Public Works Director if the program is already in place.	Project Applicant	Brisbane Public Works Department	Prior to issuance of a building permit
<b>UTL-1c:</b> The project applicant shall pay their fair share, as determined by the City of Brisbane Public Works Department, for the future development of a water storage tank sized to provide local fire and maximum day demands water volume to serve Sierra Point.	Project Applicant	Brisbane Public Works Department	Within 30 days of issuance of a certificate of occupancy permit for Phase 1
<b>UTL-2:</b> The proposed project shall include a dedicated fire flow supply loop separate from the potable water system properly sized to handle project fire flow requirements and connected, through a double detector check valve assembly, directly into the street main at two separate locations in accordance with Public Works Department and Fire Authority specifications. Each fire supply loop connection to the street main shall include a double detector check valve. A fire loop system separated from the potable water system will allow for smaller water mains to serve the peak daily demand for the project, thereby allowing for quicker water turnover in the potable water system. Separate potable and fire supply systems will also allow for maintenance on either looped system without affecting the other. The separate potable water service shall be looped by connecting directly into the street main at two separate metered locations.	Project Applicant	Brisbane Public Works Department	Prior to issuance of a certificate of occupancy permit

Table 1 *Continued*

Mitigation Measures	Mitigation Responsibility	Monitoring/Reporting Agency	Monitoring Schedule
<p><b>UTL-2 Continued</b></p> <p>As an alternative, the applicant could submit a proposal for a dual-use fire/potable water loop but, as part of such a submittal, must provide sufficient evidence (e.g., hydraulic calculations) to the satisfaction of the City Engineer, that the water would not stagnate in such a dual-use system and that the impact would be mitigated to a less-than-significant level.</p> <p>Additional water quality measures may be required in the event that a dual-use fire/potable water loop is installed. Such measures include, but are not limited to, programmable automatic water line flushing units and in-line water quality monitoring stations. Design for the reuse of the flushing discharge water, such as recycling the water back into the landscaping, would be required.</p>			
<p><b>UTL-3:</b> The project applicant shall pay for the installation of larger pumps or a complete replacement of the Sierra Point Lift Station, as determined by the Public Works Department, to accommodate the increase in peak sewer flows from the project site. In the event the improvements have been completed at such time as the applicant is ready to develop, the applicant shall pay a fair share of such improvements as determined by the Public Works Director. Additional required improvements to the lift station may include replacement of the electrical system and a larger standby generator.</p>	Project Applicant	Brisbane Public Works Department	Prior to issuance of a certificate of occupancy permit for Phase 2
<p><b>UTL-4:</b> The project applicant shall eliminate all existing service fittings along the 16-inch diameter perimeter water line adjacent to the project site and shall replace the line with a straight length of identical high-density polyethylene (HDPE) pipe with fused joints. All future services shall be cut-in shop fabricated tees. The applicant shall pay for a full-time City inspector to be on site during the installation of the HDPE water pipe. A 2-inch blow-off shall be installed along the northeast end of the property along the 16-inch water main. Future valves shall be installed inside an underground vault.</p>	Project Applicant	Brisbane Public Works Department	Prior to certificate of occupancy permit for Phase 1
<p><b>UTL-5a:</b> As a condition of approval and prior to the issuance of any building permits for the project, the applicant shall implement additional water conservation measures for the project. The proposed project shall comply with all applicable elements of the SFPUC's Water Conservation Program C, as described in the WSA. In addition, the project shall comply with Program D, as described in the WSA, and shall install (i) waterless urinals or, alternatively, as described in the WSA, provide additional funding to the toilet retrofit program, (ii) dedicated landscape meters for outdoor irrigation use, and (iii) low water-use, drought-resistant, non-invasive landscaping including native plants where possible and feasible. The program design and demand reduction shall be reviewed and approved by the City Engineer. The specific water conservation measures shall be incorporated into the final building design.</p>	Project Applicant	Brisbane Public Works Department/City Engineer	Prior to issuance of a building permit
<p><b>UTL-5b:</b> As a condition of approval, the applicant shall also participate in Program E, as described in the WSA, which includes the funding of landscape irrigation retrofits at public areas in the Sierra Point area of Brisbane and residential high efficiency toilet retrofit programs for the City, or, in the event that goals specified in the WSA are not met, additional conservation measures required by the City Engineer shall be required to achieve the water</p>	Project Applicant	Brisbane Public Works Department/City Engineer	Prior to issuance of a building permit

Table 1 *Continued*

Mitigation Measures	Mitigation Responsibility	Monitoring/Reporting Agency	Monitoring Schedule
demand reduction goals.			
UTL-5c: Future water supply shortages would be managed through water conservation and rationing programs and increased demand management. In accordance with previously adopted Water Conservation Programs, the project site and all other water users in the Brisbane Water Service Area could be subject to mandatory reductions in consumption on a system-wide basis, mandatory reductions in consumption for outside irrigation, restrictions on various types of water use, excess use charges and flow restrictions and termination of water service for non-compliance with the program elements.	Project Occupants	Brisbane Public Works Department	During occupancy, as required

Source: LSA Associates, Inc., 2008.

## RESOLUTION NO. 2011-40

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE UPHOLDING AN APPEAL FROM A DECISION OF THE PLANNING COMMISSION CONCERNING THE SIERRA POINT OPUS OFFICE PROJECT

WHEREAS, on behalf of owner Sierra Point, LLC, the Don Little Group ("applicant") applied to the City of Brisbane for an extension of the approvals of an office project consisting of approximately 438,104 square feet of office space in two buildings (8 and 10 stories), a 5-level 1,175-space parking structure and 211 surface parking spaces on approximately 8.9 acres of vacant land located on the northwesterly side of Marina Boulevard, easterly of Highway 101 at Sierra Point ("the Project"), such approvals having originally been granted by the City Council in Resolution No. 2009-14 dated May 4, 2009, identified as Design Permit DP-5-07, Use Permit UP-3-08 and Variance V-1-08 (the "Original Approvals"), and such extension applications being identified as Design Permit DP-2-11, Use Permit UP-7-11, and Variance V-2-11; and

WHEREAS, on May 26, 2011, June 9, 2011 and June 23, 2011, the Planning Commission of the City of Brisbane conducted a hearing on said extension applications, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, following the conclusion of the hearing, on June 23, 2011, the Planning Commission denied the application for extension; and

WHEREAS, the applicant filed a timely appeal from the decision of the Planning Commission to the Brisbane City Council; and

WHEREAS, on July 18, 2011, the City Council conducted a de novo hearing on the appeal, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the City Council has reviewed and considered the staff reports, minutes of proceedings conducted by the Planning Commission relating to the applications, and the written and oral evidence presented to the City Council at the public hearing on the appeal,

NOW, THEREFORE, be it RESOLVED by the City Council of the City of Brisbane as follows:

1. The appeal is upheld and the decision of the Planning Commission denying an extension is reversed. The Original Approvals granted by the City Council in Resolution No. 2009-14 for Design Permit DP-5-07, Use Permit UP-3-08, and Variance V-1-08 are extended for the period of time hereinafter specified, subject to the Conditions of Approval set forth in Exhibit A attached hereto and incorporated herein by reference.

2. The City Council finds and determines that there has been no changes in the design or environmental impacts of the Project and no change in any ordinances or regulations applicable to the Project since the Original Approvals were granted. Consequently, there is no need to reconsider the findings made by the Planning Commission in support of the Original Approvals, as set forth in Resolution DP-5-07/UP-3-08/V-1-08 adopted on February 26, 2009, as ratified and approved by the City Council in Resolution No. 2009-14 adopted on May 4, 2009.
3. As an inducement for the City Council to grant the extension of time for the Original Approvals, the applicant has agreed to construct the Project in accordance with the LEED gold standard in effect as of the time an application for a building permit is submitted to the City. In exchange for this upgrade to the Project, the City Council agrees to enter into a Development Agreement with the applicant or his designee, in form and substance to be approved by the City Council, providing for further extension of the Original Approvals for a period of time not exceeding ten (10) years from the effective date of such agreement.
4. The Original Approvals that have a specified duration are extended for a period of three (3) years to April 20, 2014, and may be further extended upon the occurrence of either or both of the following events:
  - (a) If the City adopts an ordinance providing for zoning approvals to expire at the same time as a tentative parcel map or tentative subdivision map for the same project and the tentative parcel map for this Project (TPM-1-08) has an expiration date after April 20, 2014, the Original Approvals shall be further extended to the same expiration date for the tentative parcel map for this Project (TPM-1-08).
  - (b) Upon the execution of a Development Agreement between the applicant or his designee and the City providing for an expiration date after April 20, 2014, the Original Approvals shall be further extended to the same expiration date set forth in such Development Agreement.

  
Cyril G. Bologoff, Mayor


**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Brisbane held on the 1<sup>st</sup> day of August, 2011, by the following vote:

AYES: Councilmembers Conway, Richardson, Waldo, and Mayor Bologoff

NOES: None

ABSENT: Councilmember Lentz

ABSTAIN: None

  
Sheri Marie Spediacci, City Clerk

## EXHIBIT A

### CONDITIONS OF APPROVAL:

Design Permit DP-5-07/DP-2-11

Use Permit UP-3-08/UP-7-11

Variance V-1-08/V-2-11

- A. The project shall comply with the Mitigation Measures set forth in the adopted mitigated negative declaration and adopted Mitigation Monitoring and Reporting Program.
- B. All grading shall be contained on the site and shall comply with the provisions of Brisbane Municipal Code (BMC) Chapter 15.01. A separate grading permit shall be obtained from the City Engineer as required per Brisbane Municipal Code Chapter 15.01. The approval of the original Design Permit by the Planning Commission and by the City Council on appeal shall constitute approval of the proposed grading per BMC Sections 15.01.081 and 17.32.220.
- C. Prior to grading or building permit issuance plans shall be subject to review and approval by the San Mateo County Environmental Health Services Division.
- D. Grading plans shall clearly specify trees to be retained and trees to be removed. Trees to be removed shall be minimized to the extent feasible. Trees to remain shall be protected in place shall be surrounded by mesh construction fencing establishing a 5-foot protection zone around each tree trunk. A licensed arborist shall be present during grading and construction operations adjacent to trees to ensure adequate measures are taken for tree protection, and to consult as to the extent of required tree removal along the northerly project boundary during clay cap installation.
- E. Prior to issuance of grading or building permits, project applicant shall incorporate into the project design stormwater site design, source control, and treatment measures to the satisfaction of the City Engineer and in accordance with Provision C.3 of the San Mateo Countywide municipal stormwater permit. All added or replaced roadway surfaces must be managed in accordance with the current municipal stormwater requirements. This includes incorporating site design measures to reduce impervious surfaces and maintain existing vegetation and drainageways, source control measures to address potential pollutant sources, and treatment measures to improve stormwater runoff quality before discharging to the Bay. As such, roadway, sidewalk, and path widths should be minimized to reduce impervious surface area and vegetation, whether in the median or along the sides of roads, sidewalks, or paths, should be designed to provide stormwater quality benefits. Vegetated stormwater treatment measures should be designed in accordance with countywide guidance and address issues associated with infiltrating stormwater runoff on a former landfill. Vegetation should also be selected consistent with Bay Friendly Landscaping Guidelines to minimize irrigation, pesticide, and fertilizer needs.

- F. Prior to grading permit issuance the applicant shall file a Notice of Intent to comply with the statewide General Permit for Discharges of Storm Water Associated with Construction Activities, and shall prepare a Storm Water Pollution Prevention Plan (SWPPP) for construction activities on the site. The SWPPP shall include all provisions of the Erosion and Sediment Control Plan submitted by the previous applicant. In addition to the regulatory requirements for the SWPPP, the site-specific SWPPP shall include provisions for the minimization of sediment disturbance (i.e., production of turbidity) and release of chemicals to the Bay.
- G. Prior to issuance of a building permit:
1. The site plan shall be revised subject to Community Development Department review and approval to:
    - (a) Include no fewer than 1,373 parking spaces;
    - (b) Show that abutting parking bays shall be separated by a planter strip with a minimum 4' wide area clear of vehicular overhang. As an alternate, such parking bays shall be reconfigured to accommodate tree wells every 6-8 spaces.
    - (c) Redesign the main (northerly) driveway entrance to include a minimum 4-foot wide median, consistent with the requirements of the Sierra Point Design Guidelines.
  2. Building elevations shall clearly specify all roof-mounted equipment shall be screened, and all such screening shall be architecturally integral with the buildings.
  3. Building elevations shall be revised to incorporate a trellis/canopy element at all building entrances to Community Development Department Director review and approval.
  4. The westerly garage elevation shall be revised to incorporate trellis/popout elements at the northwesterly corner, center and southwesterly corners to break the garage plane and roofline, subject to approval by the Community Development Director. A darker accent shall also be applied to the upper level of the garage to further deemphasize its appearance. Vehicular and pedestrian entries shall incorporate architectural enhancements to promote wayfinding.
  5. Final specifications regarding project materials, colors and finishes shall be subject to Community Development Department review and approval.
  6. The applicant shall demonstrate compliance with the City's Green Building Requirements (Municipal Code Chapter 15.80) to the satisfaction of the City's Green Building Compliance Official as defined in the City Municipal Code.



7. The applicant shall demonstrate adequate ventilation of parking structure to the satisfaction of the Building Official, including exterior exhaust fan termination as applicable.
8. Tentative Parcel Map TPM-1-08 shall be recorded.
9. The applicant shall obtain BCDC approval of Bay Trail improvement plans including but not limited to trail alignment and surfacing, benches, lighting and amenities such as interpretational signage and/or public art. Per the Sierra Point Design Guidelines provide a minimum 15-foot wide planting area between the public parking area and trail alignment.
10. Easements as deemed necessary by the Community Development Director in a form acceptable to the City Attorney shall be recorded for the provision of public access and use of the Bay Trail and related improvements in perpetuity, including public use of designated public trail access parking spaces.
11. Detailed water-efficient landscaping and irrigation plans shall be submitted for approval by the Community Development Department. The final landscaping plans shall be consistent with the plant list established in the Sierra Point Design Guidelines and incorporate the following:
  - (a) vegetated swales consistent with the stormwater controls for the site;
  - (b) berming or hedging to screen parking areas adjacent to Marina Boulevard;
  - (c) replacement of mature trees removed along the northerly project boundary to accommodate installation of the final clay cap.
  - (d) columnar trees along the west side of parking structure to help screen and visually soften the appearance of this structure.
  - (e) details regarding hardscape, lighting, fencing, street furniture and employee gathering areas, consistent with the Sierra Point Design Guidelines.
  - (f) details regarding how access to the emergency vehicle roadway along the north edge of the project will be restricted.
  - (g) an integrated pest management plan prepared by a qualified professional acceptable to the City of Brisbane to eliminate fertilizer and/or pesticide runoff into the Bay.
  - (h) Removal of invasive, non native plant species along the upland portion of the northerly project boundary to the extent feasible without impacting habitat values. A qualified biologist shall mark the limits of acceptable plant removal before such work commences.

- (i) Landscaping of the upland portion of the northerly boundary, using Bay native plant species to the maximum extent feasible and consistent with the requirements of mitigation measure BIO-1b.
- 12. The property owner shall enter into a standard landscape maintenance agreement with the City to the satisfaction of the City Attorney.
- 13. Exterior lighting plans shall be subject to Community Development and Police Department review and approval, and shall be consistent with the approved Sierra Point Design Guidelines.
- 14. The plans submitted for a building permit shall comply with the requirements of the Brisbane Municipal Code (BMC), the California Fire Code (CFC), the California Building Code (CBC) and the California Code of Regulations (CCR).
- 15. The applicant shall consult with the South San Francisco Scavenger Company to assure that the trash enclosure shall be of sufficient size to accommodate recycling receptacles, as well as trash dumpsters. Plans submitted for the building permit shall include trash enclosure details, relating its appearance to that of the building to the satisfaction of the Community Development Department.
- 16. Centralized mail facilities shall be provided to the specifications of the U.S. Postal Service.
- H. Prior to issuance of a Certificate of Occupancy, applicant shall submit for approval by the City Engineer an operation and maintenance plan for on-site stormwater treatment measures.
- I. Prior to issuance of a Certificate of Occupancy, Property Owner shall enter into and cause to be recorded on the property deed a Stormwater Treatment Measures Operation and Maintenance Agreement, which will serve as a signed statement by the Property Owner accepting responsibility for operation and maintenance of stormwater treatment measures until such time as the responsibility is legally transferred to another person or entity.
- J. Prior to September 1 of each year and until such time as a Certificate of Occupancy is issued, applicant shall submit a revised Erosion Control Plan detailing measures that will be implemented by October 15 to prevent sediment discharge in stormwater runoff during the rainy season.
- K. Any project phasing shall substantially comply with the phasing plan presented to the Planning Commission on December 18, 2008, with the exception that landscaped improvements along the entire Marina Boulevard frontage shall be included within phase 1 of the development. Phasing shall be designed to ensure that phase 1 can continue to operate in normal fashion during phase 2 construction so as not to impact adjacent properties.

- L. The required parking spaces shall not be used or converted to any other use that would impair their basic use as parking for motor vehicles per Brisbane Municipal Code Section 17.34.020.A.
- M. No signage is approved as part of this permit. A Sign Permit shall be obtained prior to the installation of any signs not otherwise exempt by the Municipal Code.
- N. Minor modifications may be approved by the Community Development Director in conformance with all requirements of the Municipal Code.
- O. The Applicant agrees to indemnify, defend and hold the City and its officers, officials, boards, commissions, employees and volunteers harmless from and against any claim, action or proceeding brought by any third party to attack, set aside, modify, or annul the approval, permit or other entitlement given to the Applicant, or any of the proceedings, acts or determinations taken, done or made prior to the granting of such approval, permit or entitlement.
- P. Application for a Building Permit (via submittal of 5 sets of plans and payment of plan check fees) for the proposed improvements shall be made, and the improvements shall be completed to the satisfaction of the Building Official prior to granting of a certificate of occupancy.
- Q. An encroachment permit shall be obtained prior to any work within the public right-of-way.
- R. Staff and the applicant shall make a good faith effort to obtain emergency access vehicular rights for City of Brisbane emergency vehicles over the existing emergency access roadway at the south end of Sierra Point (within the City of South San Francisco).
- S. The applicant shall work with the City Engineer and Caltrans to restripe the northbound Sierra Point Parkway offramp from Highway 101 to convert the existing through/left turn lane to a shared through/left/right turn lane.
- T. Upon request of the applicant, the City Engineer will issue a "will serve" letter valid for that period of time the project is active, reserving the water supply for the project as determined in the Water Supply Assessment, subject to compliance with the mitigation measures set forth in the Mitigated Negative Declaration.
- U. The applicant shall have the option to either:
  - 1. install 4,500 square feet of photo-voltaic panels on the north half of the garage roof and decorative trellises on the south half of the garage roof; or
  - 2. install wind power equipment having the capability of generating wind power at least equivalent to the solar panels described in Option 1, subject to approval as to the capacity, design, and location of such equipment by the Planning Commission; or

- 3 install decorative trellises on both the north and south halves of the garage roof and make a cash contribution in the amount of \$360,000 to the City of Brisbane to fund off site renewable energy projects, as determined by the City.

In any case, the parking garage shall be pre-plumbed to accommodate the future installation of solar panels on the garage roof to the maximum extent feasible.

- V. The applicant shall make a good faith effort to work with the City of Brisbane and adjacent property owner to remove debris along the northerly and westerly project boundary.
- W. Five plug-in parking spaces shall be provided per floor of the parking garage, unless an alternate configuration is approved by the Community Development Department.