EXHIBIT A
to ORDINANCE 2005-17

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BAY MEADOWS PHASE II DEVELOPMENT AGREEMENT

CITY: The City of San Mateo, a municipal corporation of the State of California

OWNER: Bay Meadows Land Company, a Delaware corporation

ORIGINAL

TABLE OF CONTENTS

Page

1. Definitions. 12
   - 1.1. Adoption Date. 12
   - 1.2. Application Date. 12
   - 1.3. Approvals. 12
   - 1.4. Assignment Agreement. 12
   - 1.5. Block. 12
   - 1.6. BMR Units. 12
   - 1.7. CC&Rs. 12
   - 1.8. CEQA. 13
   - 1.9. CFD. 13
   - 1.10. City-Wide. 13
   - 1.11. City Law(s). 13
   - 1.12. City Manager. 13
   - 1.13. Community Park. Defined in Section 5.9.1. 13
   - 1.14. Compensatory Right-of Way. Defined in Section 3.10. 13
   - 1.15. CPI. 13
   - 1.16. CPI Factor. 13
   - 1.17. Design Guidelines. 13
   - 1.18. Development Agreement Resolution. 14
   - 1.19. Director. 14
   - 1.20. Effective Date. 14
   - 1.21. EIR. 14
   - 1.22. Election to Discontinue Racing. 14
   - 1.23. Enacting Ordinance. 15
   - 1.24. Event of Default. 15
   - 1.25. Exactions. 15
   - 1.26. Existing City Laws. 15
   - 1.27. First Phase. 15
   - 1.28. General Plan. 15
   - 1.29. General Plan Amendment. 16
   - 1.30. JPB. 16
   - 1.31. Law(s). 16
   - 1.32. Map Approvals. 16
   - 1.33. Master Tentative Map. 16
   - 1.34. Mitigation Measures. 16
   - 1.35. MMRP. 16
   - 1.36. Mortgage. 16
   - 1.37. Mortgagee. 17
   - 1.38. Owner. 17
   - 1.39. Party. 17
   - 1.40. Person. 17
   - 1.41. Processing Fee. 17
   - 1.42. Project. 17

Table of Contents
(Continued)

Page

1.43. Project Approvals. 17
1.44. Property. 18
1.45. Project Tentative Map Approval. 18
1.46. Public Improvements. 18
1.47. SPAR. 18
1.48. Specific Plan. 18
1.49. Specific Plan Amendment. 18
1.50. Substantial Public Benefits. 18
1.51. Term. 18
1.52. Terminate. 19
1.53. Transferred Property. 19
1.54. Trip Budget. 19
2. Effective Date; Term. 19
2.1. Effective Date. 19
2.2. Expiration of Term. 19
3. General Development of the Project. 20
3.1. Project. 20
3.2. Milestones: Processing of Design Guidelines and Initial SPAR; First Phase; Timing of Dedications and Contributions. 21
3.2.1. Presentation of Draft Design Guidelines. 21
3.2.2. Submission of Design Guidelines. 21
3.2.3. Application for First Phase. 21
3.2.4. SPAR for Block Along Delaware. 21
3.2.5. Dedication of Community Park. 22
3.2.6. Dedication of Linear Park and Neighborhood Park. 22
3.2.7. Dedication of Delaware Avenue Right of Way. 22
3.2.8. Traffic Calming Contribution. 22
3.2.9. Limitation. 22
3.3. Specific Plan. 23
3.4. Subsequent Projects. 23
3.5. Applicable Laws and Standards. 23
3.6. Other Governmental Permits. 24
3.7. Processing Fee. 24
3.8. No Further Exactions. 24
3.9. Transportation Mitigation Fee. 25
3.10. Advance Payment of Transportation Mitigation Fee; Consideration for Early Termination. 26
3.11. Review and Processing of City Approvals. 28
3.12. Extension of Approvals. 29
3.13. Interim Uses. 29
4. Subdivision of Property. 29

Table of Contents
(Continued)

Page

4.1. Master Tentative Map. 29
4.2. Project and Future Tentative Maps. 30
4.3. Government Code Section 66473.7. 30
5. Specific Criteria Applicable To Development Of The Project. 31
5.1. Application of New City Laws. 31
5.2. Conflicting Laws. 32
5.3. Timing. 32
5.4. Subsequent Environmental Review. 33
5.5. Easements; Improvements; Abandonments. 33
5.6. Design of On-Site and Off-Site Improvements. 34
5.7. Single Integrated Development. 34
5.8. Public Improvements. 34
5.8.1. Phasing. 35
5.8.2. Stormwater. 35
5.8.3. Rough Grading. 36
5.8.4. Improvement Agreements and Security. 36
5.8.5. Off-site Public Improvements. 36
5.9. Parks and Open Space. 37
5.9.1. Timing of Dedication and Interim Improvements 37
5.9.2. Dedication and Designation of Linear Park and Neighborhood Park. 38
5.9.3. Maintenance of Open Space and Dedicated Parks. 38
5.10. Delaware Street. 38
5.11. Community Facilities District. 39
5.12. Minimum Ten Percent Below Market Rate Units; Property Set-Aside for Additional BMR Units. 39
5.13. Waiver of Density Bonus. 40
5.14. Traffic Calming Contribution. 41
5.15. Contribution to Public Art. 41
5.16. Contribution to Improve Casanova Park 42
5.17. Contribution to Fiesta Gardens Homeowners Association. 42
5.18. Green Building Demonstration Project. 43
5.19. Prohibition on Expanded Gaming. 43
5.20. Loss of Racing Revenue. 44
6. Periodic Review of Compliance. 44
6.1. Annual Review. 44
6.2. Owner's Submission. 45
6.3. Finding of Compliance. 45
6.4. Finding of Noncompliance/Danger to Health and Safety. 46
6.5. Appeals to City Council. 46
6.6. Miscellaneous Requirements in Connection With Annual Review. 47
6.7. Standards. 48

Table of Contents
(Continued)

Page

6.8. Effect on Transferees. 48
6.9. Event of Default. 49
7. Permitted Delays; Supersedure by Subsequent Laws. 50
7.1. Permitted Delays. 50
7.2. Subsequent Laws. 50
8. Events of Default; Remedies; Termination; Attorneys' Fees. 51
8.1. Events of Default. 51
8.2. Remedies. 51
8.3. Standards for Termination; Procedure on Termination. 53
8.3.1. Standards. 53
8.3.2. Procedure for Termination. 53
8.3.3. Effective Date of Termination. 54
8.3.4. Judicial Proceeding to Challenge Termination. 54
8.4. Effect of Termination. 54
8.5. Limitations on Actions. 55
8.6. Waiver; Remedies Cumulative. 55
8.7. Attorneys' Fees. 56
8.8. No Third Party Beneficiaries. 57
8.9. Effect of Court Action. 57
8.10. Estoppel Certificate. 57
9. Mortgagee Protection; Certain Rights of Cure. 58
9.1. Mortgagee Protection. 58
9.2. Mortgagee Not Obligated. 58
9.3. Notice of Default to Mortgagee; Right of Mortgagee to Cure. 58
9.4. Right of City to Cure. 60
10. Transfer and Assignment. 60
10.1. Assignment. 60
10.2. Notice. 61
10.3. Assignment Agreement. 62
10.4. Trip Budget. 62
10.5. Covenants Run With The Land. 63
11. Amendment and Termination. 63
11.1. Amendment or Cancellation. 63
11.2. Recordation. 64
12. Notices. 64
12.1. Procedure. 64
13. Miscellaneous. 65
13.1. Negation of Partnership. 65
13.2. Approvals. 65
13.3. Project Approvals Independent. 66
13.4. Not A Public Dedication. 66

Table of Contents
(Continued)

Page

13.5. Severability. 66
13.6. Exhibits. 67
13.7. Entire Agreement. 67
13.8. Construction of Agreement. 67
13.9. Further Assurances; Covenant to Sign Documents. 67
13.10. Governing Law. 68
13.11. References; Terminology. 68
13.12. Signature Pages. 69
13.13. Construction. 69
13.14. Time. 69
13.15. Indemnification. 69

EXHIBIT A - Description of Property

EXHIBIT B – Map of Property

EXHIBIT C – Specific Plan

EXHIBIT D – Estimate of Exactions

EXHIBIT E – Below Market Rate (Inclusionary) Program

THIS BAY MEADOWS PHASE II DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of this 21st day of November, 2005, by and between the City of San Mateo, a municipal corporation of the State of California ("City"), and Bay Meadows Land Company, a Delaware corporation ("Owner"), pursuant to the authority of California Government Code Sections 65864-65869.5 and City Resolution No. 120 (1990).

RECITALS:

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

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864-65869.5 authorizing municipalities to enter into development agreements in connection with the development of real property within their jurisdiction by qualified applicants with a requisite legal or equitable interest in the real property which is the subject of such development agreement.

B. The purpose of Government Code Sections 65864-65869.5 is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations.

C. As authorized by Governmental Code Section 65865(c), City has adopted Resolution No. 120 (1990) establishing the procedures and requirements for the consideration of development agreements within the City.

D. Owner is a corporation organized under the laws of the State of Delaware and is in good standing thereunder and is qualified to do business in the State of California.

E. Owner owns fee title to that property (the "Property") consisting of approximately eighty-three (83) acres in the area described in Exhibit A attached hereto and shown on Exhibit B attached hereto and incorporated herein by reference. Currently an existing racetrack, grandstand and surface parking are located on the Property.

F. On April 22, 1997 by Ordinance 1997-11, City adopted the Bay Meadows Specific Plan (as amended by the Specific Plan Amendment considered concurrently with this Agreement, and together with further amendments made from time to time in accordance with this Agreement shall hereafter be referred to as the "Specific Plan") which covers the Property together with an approximately seventy-five (75) acre area to the east of the Property (the "Phase I Property"). At that time, the Phase I Property contained an approximately forty (40) acre practice track and a thirty-five (35) acre horse boarding area. The Phase I Property has since been developed with commercial and residential uses. The Specific Plan Amendment is attached hereto as Exhibit C. No Specific Plan amendment shall require amendment to this Agreement, unless such Specific Plan amendment would conflict with an express provision of this Agreement.

G. For more than five years, City has been engaged in an intensive community based planning process for the transportation corridor area in which the Property is located. The planning process has involved two city advisory committees and has resulted in adoption, on June 6, 2005, of the San Mateo Rail Corridor Transit-Oriented Development Plan, a plan formulated with the express goal of pursuing transit-oriented development within the transportation corridor along the Caltrain right-of-way.

H. In the course of its long-term planning process, the City has retained an independent racing industry consultant and based upon the input from that consultant, as well as

review of other materials reporting on the status of the horse racing industry in California, the City has determined that the confluence of expanded types of gaming at horse racing facilities outside California, off-track betting in California, low purses in California relative to other states, and the high cost of boarding and maintaining horses and operating horse racing inside California in comparison to other states, has and will continue to adversely impact the racing operations at the Property and that market pressures on the racing industry are pushing towards more extensive forms of gambling at racetrack facilities throughout the country, including at the Property. In balancing the various pressures and trends, the City has determined that the residents of San Mateo want to limit the potential for expanded gaming at the Property. One of the key incentives to the City for entering into this Agreement is to provide Owner with the assurances that it can develop the Project as contemplated in the Specific Plan Amendment attached hereto as Exhibit C, in exchange for Owner's obligation to limit any expansion of gaming on the Property. If transit oriented development as contemplated by the Specific Plan Amendment goes forward as planned, gaming uses will be permanently eliminated from the Property.

I. Consistent with City's goal of pursuing transit oriented development, on June 24, 2003 Owner requested that City (i) approve an amendment to the Specific Plan so as to amend the land use regulations applicable to the Property ("Specific Plan Amendment"); (ii) amend the City's General Plan in a manner consistent with the Specific Plan; and (iii) approve a Master Tentative Map (as hereafter defined) for the Property, with the associated Public Improvements and the other on- and off-site improvements contemplated by or embodied within the Specific Plan and the Project Approvals (as hereafter defined), as they may later be further amended, refined, enhanced or modified (collectively, the "Project").

J. The Project facilitates the City's long-term goal of pursuing transit-oriented development within the transportation corridor plan area, by proposing a new mixed use neighborhood that maximizes the use of transportation alternatives to the private automobile. In particular, the Specific Plan is designed to maximize mass transit associated with the express stop Caltrain Station proposed to be relocated no more than a quarter of a mile from anywhere on the Property. The Specific Plan is also designed to enhance opportunities for walking and biking, by providing a linked system of parks and open space and linkages to existing bike paths. By providing a mix of commercial, residential and retail uses, the Specific Plan will reduce traffic compared to other development. The Project provides for the dedication, design and improvement (at no cost to the City) of a 1.5 acre Linear Park and a 1.5 acre Neighborhood Park. The Project provides for the completion of key components of the City's street-grid, including new connections at 28th and 31st, and the connection of Pacific to Delaware, increasing connectivity between the east and west portions of the City, and relieving congestion on Hillsdale and El Camino. The Project provides an estimated $9.9 million in transportation impact fees which will provide a source of funding for the City's local share of the cost to implement additional rail grade separations at 28th and 31st. The Project will provide an estimated $2.1 million in wastewater treatment expansion fees, and an estimated $3.3 million in school fees. Through a hierarchy of on-site stormwater management systems, the Project will not only be able to retain its own stormwater runoff, it will also provide additional capacity to reduce the severity of the existing flooding conditions in surrounding neighborhoods. (Collectively, these benefits along with others recited below shall be referred to as "Project Public Benefits".)

K. The City has completed an independent fiscal impact analysis that evaluates the effect of the Bay Meadows Phase II Project upon the City's municipal costs and revenues. The fiscal analysis concludes that the Project will have a positive impact upon the City, even when accounting for the ending of horse racing on the site, and the associated loss of racing related revenues. Specifically, the Fiscal Analysis found that: 1) fiscal surpluses will accrue as the project develops beginning in 2008 under the currently assumed development schedule; 2) projected fiscal surpluses will exceed the current fiscal benefit of race track operations each year of Project development; and 3) fiscal surpluses are shown to continue through completion of the new neighborhood, approaching $2 million annually by Project build-out.

L. As provided in the Specific Plan and documented in the Project EIR and the Fiscal Impact Analysis, the Bay Meadows Phase II Project will expand employment opportunities in San Mateo by creating a commercial district with capacity of more than one million square feet of retail, office and service-commercial space. This space may accommodate more than 3,000 permanent employees, substantially offsetting the loss of the existing 900 jobs associated with the race track operations, many of whom will be eligible for employment at the gaming facility planned at the adjacent Expo Center. Additionally, construction and related real estate industry employment will be generated during the anticipated 20 year construction period with an annual average of approximately 500 workers.

M. City has determined that the Project is a development for which a development agreement is appropriate. A development agreement will eliminate uncertainty in the City's land use planning for the Property and secure orderly development of the Project consistent with the Specific Plan, assure progressive installation of necessary improvements and mitigation appropriate to each stage of development of the Project, insure attainment of the maximum

effective utilization of resources within the City at the least economic cost to its citizens, secure public improvements and amenities that could not otherwise be obtained, and otherwise achieve the goals and purposes for which the Development Agreement Resolution was enacted by the City.

N. Owner has committed to develop, cause to be developed, or contribute to significant infrastructure and other improvements, as well as Project features and fees, to accommodate this Project and other anticipated regional growth and local projects in excess of what the Owner could otherwise be legally required to provide (collectively, "Substantial Public Benefits") The value of Substantial Public Benefits recited below is conservatively estimated to be over $30 million, not counting the non-monetary benefit of eliminating the potential for expanded gaming on the Property. The Substantial Public Benefits are as follows:

1. Owner has committed to provide, at no cost to City, a total of fifteen (15) acres of parks and open space, including a publicly dedicated twelve (12) acre parcel for a community park, and two (2) one-and-one-half acre parcels of other publicly dedicated parks. Assuming the eventual development of 1,500 units, and assuming the City's population factor from the 2000 Census of 2.48 residents per unit, the total acreage devoted to publicly dedicated parks represents a minimum of 7.56 acres more than the amount of parkland required to serve the Project (more than double the City's standard requirement), and otherwise required for the Project under current City Laws. In addition, Owner has committed to provide, improve and maintain 2.85 acres of additional substantive open space, including a view corridor, a town square adjacent to the new train station and enhanced bicycle and pedestrian facilities within the development. The Owner has agreed to

undertake the maintenance of all landscaping, medians and open space (other than the public parks) in accordance with Section 5.9.3.

2. Owner has agreed to design and construct initial improvements to the new community park, consisting of one regulation baseball field and one regulation soccer field, utilizing grass turf, so as to provide immediately useable park land upon dedication. The City may, at its election, forego the provision of the park improvements by Owner and instead elect to receive a $1 million cash contribution towards the development of the new community park improvements in accordance with the City's ultimate design.

3. Owner has agreed to make a $250,000 contribution to be used for traffic calming, which contribution is in excess of the City's required traffic mitigation fee.

4. If after six (6) years from the Effective Date, the development has not moved forward as described in and pursuant to Section 3.10 (Advance Payment of Transportation Mitigation Fee) the Owner shall advance $4.6 million in transportation mitigation fees or terminate this Agreement.

5. Owner shall, pursuant to Section 5.10 (Delaware Street), dedicate upon the demand of the Public Works Director, at no cost to City, the right-of-way to construct a Delaware Street connection through the Property, as needed by City, even if required in advance of the timing provided for in the Project Approvals.

6. If after six (6) years from the Effective Date, the development has not moved forward Owner shall, pursuant to Section 3.10, dedicate at no cost to City,

the right-of-way to construct a Delaware Street connection through the Property, as needed by City.

7. The Owner shall contribute, in accordance with Section 5.15, $1,000,000 to the City to be used for public art and an additional $50,000 to City Arts of San Mateo for the purpose of funding its campaign for the arts.

8. The Owner shall contribute, in accordance with Section 5.16, $100,000 to the City to be used to improve or to reimburse the City for improvements to Casanova Park in the Glendale Village neighborhood of the City, when and as needed.

9. The Owner shall contribute, in accordance with Section 5.17, $100,000 to the Fiesta Gardens Homeowners Association to be used for planning, design and implementation of aquatic improvements in Fiesta Gardens common areas.

10. In order to facilitate the development of additional below market rate housing in the Project, the Owner shall dedicate, in accordance with Section 5.12(b), a net acre of land in a Mixed Use Block to be used by the City or its designee for the construction of moderate, very low or low-income housing. This housing shall be provided in addition to the ten percent (10%) below market rate housing being provided by the Owner as part of the Project. It is expected that the acre of land to be dedicated in accordance with this Agreement, will provide sufficient housing such that 15 percent of the total residential units to be constructed in the Project will be affordable units, thus exceeding the provisions of Measure H, Measure P and the requirements of the City's existing below market rate housing program (Resolution 126-92) and adding 50 percent more

affordable units and potentially including units that may be affordable to families below moderate income. This affordable housing will substantially contribute to meeting the City's affordable housing objectives set forth in its General Plan Housing Element.

11. Construction of the Project in accordance with the Specific Plan Amendment will, by creating an economically viable alternative to racing operations on the Property, eliminate the potential for future expansion of casino-style gambling operations. Moreover, Owner agrees that until the earlier to occur of the second anniversary of the date Owner applies for the Design Guidelines, and the City's approval of Owner's application for the First Phase approvals, Owner shall not permit the use of the Property for slot machines, video lottery terminals, or other forms of expanded gaming at the track, other than wagering on horse racing. Upon the City's approval of the First Phase applications, on conditions satisfactory to Owner, the Owner shall (in accordance with Section 5.19), agree to record a covenant against the Property, restricting the use of the Property so as to permanently prohibit the right to slot machines, video lottery terminals, or other forms on expanded gaming at the track, other than wagering on horse racing.

12. The Project, in accordance with the Specific Plan, is designed and will be constructed to include state-of-the-art features designed to conserve energy, minimize the environmental footprint, and promote the sustainable use of non-renewable natural resources. Specifically, the Owner, in accordance with Section

5.18, shall build a demonstration project composed of 30 market rate units meeting a LEEDs silver standard, or its equivalent.

13. The Owner agrees, in accordance with Section 5.20, to pay a maximum of $300,000 annually to the City to compensate for the loss of net City revenues should Owner delay the commencement of development of the Property following Owner's election to permanently discontinue racing on the Property.

O. In exchange for the Substantial Public Benefits of the Project, Owner desires to receive assurances that City shall grant permits and approvals required for the development of the Project over the Project's estimated 18 year development horizon, in accordance with procedures provided by law and in this Agreement, and that Owner may proceed with the Project in accordance with the Existing City Laws. In order to effectuate these purposes, the Parties desire to enter into this Agreement.

P. City examined the environmental effects of both the Project and the San Mateo Rail Corridor Plan in an Environmental Impact Report (the "EIR") prepared and circulated for public review pursuant to CEQA, and the City Council certified the EIR on April 18, 2005.

Q. After conducting a duly noticed public hearing pursuant to the Development Agreement Resolution on July 26, 2005, that was continued to meetings on August 9th, 16th and September 8th, on September 8, 2005, by a vote of 4-0, with one abstention, the Planning Commission recommended that the City Council approve this Agreement, based on the following findings and determinations: that this Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan; is compatible with the uses authorized in and the regulations prescribed for the land use district in which the

Property is located; is in conformity with public convenience, general welfare and good land use practices; will not be detrimental to the health, safety and general welfare of the City or the region surrounding the City; will not adversely affect the orderly development of property or the preservation of property values within the City; and will promote and encourage the development of the Project by providing a greater degree of requisite certainty with respect thereto.

R. Thereafter, on October 17, 2005, the City Council held a duly noticed public hearing on this Agreement pursuant to the Development Agreement Resolution. At a duly noticed public meeting November 7, 2005 and after independent review and consideration, the City Council made the same findings and determinations by its own independent conclusion, as had the Planning Commission and confirmed that the Project was previously analyzed by the certified EIR. The City Council also adopted certain mitigation measures for the Project, approved the Specific Plan Amendment, approved the proposed amendment to the City's General Plan, and approved the Master Tentative Map for the Property. The City Council also found this Agreement consistent with the City's General Plan and the Specific Plan. On that same date, the City Council approved this Agreement by first reading of Ordinance No. 2005-17. On November 21, 2005, the City Council approved this Agreement by second reading of Ordinance 2005-17. Ordinance No. 2005-17 became effective on November 28 2005.

NOW, THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5, the Development Agreement Resolution and in consideration of the mutual covenants and promises of the Parties herein contained, the Parties agree as follows:

1. Definitions. Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

1.1. Adoption Date. November 21, 2005 (the date the City Council adopted the Enacting Ordinance.)

1.2. Application Date. June 24, 2003 (the date City received Owner's application for the Project Approvals).

1.3. Approvals. Any and all permits or approvals (including conditions of approval imposed in connection therewith) of any kind or character necessary or appropriate under the City Laws to confer the requisite lawful right on Owner to develop the Project, including, but not limited to, subdivision maps, site plan and architecture review, building permits, use permits, variances, site clearance, grading plans and permits, certificates of occupancy, cooperative agreements with the JPB, municipal financing (including Mello-Roos bonds), abandonment of streets or rights-of-way, and right-of-way transfers.

1.4. Assignment Agreement. Defined in Section 10.3.

1.5. Block. A portion of the Project Area, generally bordered by public right of way or property lines, as shown in the Development Framework Plan of the Specific Plan, and delineated as a Station block, Mixed Use block or Residential block.

1.6. BMR Units. Defined in Section 5.12.

1.7. CC&Rs. Covenants, conditions and restrictions recorded in the Official Records of San Mateo County on all or any portion of the Property, imposing covenants running with the land, equitable servitudes and/or easements governing the design, maintenance, operation, access and other matters in connection with the real property affected by the CC&Rs.

1.8. CEQA. The California Environmental Quality Act (Public Resources Code §§ 21000, et seq.) and the Guidelines thereunder (Title 14, Cal. Code Regs. § 15000, et seq.).

1.9. CFD. Defined in Section 5.11.

1.10. City-Wide. Any City Laws generally applicable to a development or uses of one or more kinds, wherever the same may be located in City.

1.11. City Law(s). The ordinances, resolutions, codes, rules, regulations and official policies of City, governing the permitted uses of land, density, design, improvement and construction standards and specifications applicable to the development of the Property and property upon which required off site Public Improvements will be constructed. Specifically, but without limiting the generality of the foregoing, City Laws shall include the City's General Plan, the Specific Plan, the City's zoning ordinance and the City's subdivision ordinance.

1.12. City Manager. The City Manager or his or her designee.

1.13. Community Park. Defined in Section 5.9.1.

1.14. Compensatory Right-of Way. Defined in Section 3.10.

1.15. CPI. The greater of the Engineering News Record Construction Cost Index or the consumer price index for San Francisco, California (urban wage earners) most recently published by the Bureau of Labor Statistics (or such other substitute index as the parties shall mutually agree).

1.16. CPI Factor. The difference between the CPI for the year in question, and the CPI for the previous year.

1.17. Design Guidelines. The policies, objectives, rules, illustrations and details consistent with the Specific Plan Amendment, and adopted in accordance with the

Specific Plan Amendment, which govern the design (including bulk, setbacks, materials, landscaping and parking) of structures and features to be developed in the Property.

1.18. Development Agreement Resolution. Resolution 120 (1990) entitled "Establishing Procedures and Requirements for the Consideration of Development Agreements" adopted by the City Council of the City of San Mateo on October 15, 1990.

1.19. Director. The Director shall mean the Director of Community Development for the City of San Mateo.

1.20. Effective Date. The later of (i) the date the Enacting Ordinance takes effect pursuant to City ordinances and charter; or (ii) if the Enacting Ordinance is subject to a valid referendum proceeding pursuant to Elections Code § 3500, et seq., the date the Enacting Ordinance is upheld pursuant to such referendum proceeding.

1.21. EIR. Defined in Recital P above.

1.22. Election to Discontinue Racing. The date when there have been no horseracing activities conducted on the Property because of Owner's voluntary decision not to pursue an allocation of racing dates for racing activities on the Property, it being expressly understood that (a) a failure to obtain substantially all of the historic allocation of racing dates from the horse racing board, or (b) the temporary cessation of racing activities to accommodate the rehabilitation, reconstruction or renovation of the track facilities shall not be considered an Election to Discontinue Racing. The date of the Election to Discontinue Racing shall be April 1 of the calendar year following the year when there have been no horseracing activities conducted on the Property because of Owner's voluntary decision not to pursue an allocation of racing dates for racing activities on the Property, except as provided in subsection (a) or (b) of this Section 1.22.

1.23. Enacting Ordinance. Ordinance No. 2005-17, enacted by the City Council on November 21, 2005, approving this Agreement.

1.24. Event of Default. Defined in Section 8.1.

1.25. Exactions. All exactions, costs, fees, in-lieu fees or payments, charges, assessments, dedications or other monetary or non-monetary requirement charged or imposed by City or by City through an assessment district (or similar entity) in connection with the development of, construction on, or use of real property, including but not limited to transportation improvement fees, child care in-lieu fees, art fees, affordable housing fees, dedication or reservation requirements, facility fees, sewer fees, water connection fees, obligations for on- or off-site improvements or construction requirements for Public Improvements, services or other conditions for approval called for in connection with the development of or construction of the Project under the Existing City Laws, whether such exactions constitute Public Improvements, mitigation measures in connection with environmental review of the Project Approvals, or impositions made under applicable City Laws or in order to make an Approval consistent with applicable City Laws. Exactions shall not include Processing Fees.

1.26. Existing City Laws. The City Laws in effect as of the Adoption Date.

1.27. First Phase. Defined in Section 3.2.3.

1.28. General Plan. The General Plan for the City, entitled "Visions 2005," adopted by the City Council on July 16, 1990, and subsequently amended, as in effect as of the Adoption Date.

1.29. General Plan Amendment. The General Plan amendments approved by the City Council on June 6, 2005, by Resolution No. 67-(2005) and November 7, 2005, by Resolution No111 -(2005).

1.30. JPB. The Peninsula Corridor Joint Powers Board.

1.31. Law(s). The laws of the State of California, the Constitution of the United States and any codes, statutes or mandates in any court decision, state or federal, thereunder.

1.32. Map Approvals. The Master Tentative Map Approval and the Project Tentative Map Approval(s).

1.33. Master Tentative Map. The tentative tract map non/aapproved by the City Council on November 7, 2005, by Resolution111-(2005) that subdivides the Property into two parcels consistent with the neighborhood boundaries described in the Specific Plan Amendment. Such map approval shall be called the "Master Tentative Map Approval."

1.34. Mitigation Measures. The mitigation measures applicable to the Project developed as part of the EIR process and required to be implemented by Owner, and adopted as part of the Project Approvals and implemented through the MMRP.

1.35. MMRP. The Mitigation Monitoring and Reporting Plan adopted as part of the Project Approvals, as it applies to the Project, adopted by the City Council on 11/07/2005, by Resolution No. 111.

1.36. Mortgage. A mortgage or deed of trust, or other transaction, in which the Property, or a portion thereof or an interest therein, or any improvements thereon, is conveyed or pledged as security, contracted in good faith and for fair value, or a sale and leaseback arrangement in which the Property, or a portion thereof or an interest therein, or

improvements thereon, is sold and leased back concurrently therewith in good faith and for fair value.

1.37. Mortgagee. The holder of the beneficial interest under a Mortgage, or the owner of the Property, or interest therein, under a Mortgage.

1.38. Owner. Defined in the opening paragraph of this Agreement.

1.39. Party. City and Owner, and their respective transferees, determined as of the time in question, and collectively they shall be called the "Parties."

1.40. Person. An individual, partnership, firm, association, corporation, trust, governmental agency, administrative tribunal or other form of business or legal entity.

1.41. Processing Fee. A fee imposed by a public entity payable upon the submission of an application for a permit or approval, which covers only the estimated actual costs to the public entity of processing that application, and is not an Exaction, and is not only applicable to the Project.

1.42. Project. Defined in Recital I.

1.43. Project Approvals. The following Approvals for the Project existing, obtained or enacted by City as of the date hereof, as the same may be updated, amended or modified from time to time upon application of Owner:

(i) the EIR and MMRP;

(ii) the General Plan Amendment;

(iii) the San Mateo Rail Corridor Transit-Oriented Development Plan adopted on June 6, 2005, by Resolution No. 66 (2005);

(iv) the Specific Plan; and

(v) the Master Tentative Map Approval.

1.44. Property. The real property described in Exhibit A and shown on Exhibit B on which Owner intends to develop the Project.

1.45. Project Tentative Map Approval. Any tentative tract map approved by the City Planning Commission or the City Council at any time in the future, which subdivides all or a portion of the Master Tentative Map into Blocks as shown in the Development Framework Plan of the Specific Plan. Each such map shall be called an "Project Tentative Map."

1.46. Public Improvements. The lands and facilities, both on- and off-site, to be improved and constructed, and dedicated, as provided by the Project Approvals and this Agreement. Public Improvements include all right-of-way improvements, streets and roads within the Property; all utilities (such as gas, electricity, cable television, water, sewer and storm drainage); pedestrian and bicycle paths and trails; parks; the off-site public improvements; the fair share mitigation measures; and all other improvements and facilities required or called for by the Mitigation Measures.

1.47. SPAR. Site plan and architectural review by City, in accordance with Existing City Laws.

1.48. Specific Plan. Defined in Recital F.

1.49. Specific Plan Amendment. Defined in Recital I.

1.50. Substantial Public Benefits. Defined in Recital N.

1.51. Term. The term of this Agreement, commencing on the later to occur of (i) the Effective Date or (ii) if a legal proceeding is initiated challenging the validity of the Enacting Ordinance, the MMRP, the EIR, the General Plan Amendment, the Specific Plan Amendment or other Project Approval, this Agreement, or the Master Tentative Map Approval,

the date such legal proceeding is finally concluded upholding the Enacting Ordinance or other relevant approval, and terminating eighteen (18) years thereafter, unless sooner Terminated as provided in this Agreement. For purposes hereof, a legal proceeding shall be deemed "finally concluded" upon the date of the entry of a final, non-appealable order or judgment in such proceeding upholding the validity of the Enacting Ordinance or other Project Approval.

1.52. Terminate. The expiration of the Term of this Agreement, whether by the passage of time or by any earlier occurrence pursuant to any provision of this Agreement. For purposes hereof, "Terminate" includes any grammatical variant thereof, including "Termination," "Terminated," and "Terminating."

1.53. Transferred Property. Defined in Section 10.1.

1.54. Trip Budget. Defined in Section 10.4.

2. Effective Date; Term.

2.1. Effective Date. This Agreement shall be dated and the rights, duties and obligations of the Parties hereunder shall be effective as of the Effective Date (as defined in Section 1.20). Not later than ten (10) days after the Adoption Date, City and Owner shall execute and acknowledge this Agreement, and promptly thereafter the City Clerk shall cause this Agreement to be recorded in the Official Records of the County of San Mateo, State of California.

2.2. Expiration of Term. Upon expiration of the Term (as defined in Section 1.51), this Agreement and all of the rights, duties and obligations of the Parties hereunder shall Terminate and be of no further force or effect. Upon expiration of the Term, Owner shall thereafter comply with the provisions of all City Laws then in effect or subsequently adopted with respect to the Property and/or the Project, except that expiration of the Term

(including as a result of Termination of this Agreement) shall not affect any right vested under Laws (absent this Agreement), or other rights arising from Approvals granted by City for development of all or any portion of the Project.

3. General Development of the Project.

3.1. Project. Owner shall have the vested right to develop the Project on the Property in accordance with the terms and conditions of this Agreement, the Project Approvals, and the Approvals as the same may be amended from time to time upon application of Owner; and City shall have the right to control development of the Property in accordance with the provisions of this Agreement. Except as otherwise specified in this Agreement, the Project Approvals, the Approvals and the Existing City Laws shall control the overall design, development and construction of the Project, and all improvements and appurtenances in connection therewith, including, without limitation, the permitted uses on the Property, the density and intensity of use, the maximum height and size of buildings, the number of allowable parking spaces and all Mitigation Measures required in order to minimize or eliminate material adverse environmental impacts of the Project. All building heights (calculated according to City Law) shall be fifty-five (55) feet or less. By stating that the terms and conditions of this Agreement, the Project Approvals, the Approvals and the Existing City Laws shall control the overall design, development and construction of the Project, this Agreement is consistent with the requirements of California Government Code Section 65865.2 (requiring development agreements to state permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes). In the event of any inconsistency between the Specific Plan and this Agreement, the provisions of this Agreement shall govern and control.

3.2. Milestones: Processing of Design Guidelines and Initial SPAR; First Phase; Timing of Dedications and Contributions. To the extent that the Project is developed in phases, the Parties acknowledge that presently Owner cannot predict the timing or sequence of any such Project phasing. Owner therefore shall have the right to develop the Project in phases in such order and at such times as Owner deems appropriate within the exercise of its subjective business judgment and the provisions of this Agreement and the Project Approvals. Nonetheless, Developer agrees to meet the following performance milestones contained in this Section 3.2.:

3.2.1. Presentation of Draft Design Guidelines.

Owner agrees to meet with City staff and present a draft of proposed Design Guidelines for discussion within six (6) months of the Effective Date.

3.2.2. Submission of Design Guidelines.

Owner agrees to submit an application for approval of Design Guidelines in accordance with the Specific Plan, no later than one (1) year from the Effective Date.

3.2.3. Application for First Phase.

Owner agrees to submit its first planning applications for the first portion of anticipated development, which shall be a Site Development Permit application for the framework streets as shown in the Specific Plan Amendment, and a SPAR for development of at least one Block (the "First Phase"), no later than one (1) year from the date the City's approval of the Design Guidelines is final, and any legal proceedings concerning the validity of the approval are "finally concluded" as defined in Section 1.51.

3.2.4. SPAR for Block Along Delaware.

Owner agrees to submit an application for a SPAR for a block along Delaware Avenue within three months of a Caltrain's multi-modal train station being completed within the Specific Plan area.

3.2.5. Dedication of Community Park.

Owner agrees to irrevocably offer for dedication approximately 12 acres of land adjacent to Saratoga Drive as a community park within two (2) years of the date of Owner's Election to Discontinue Racing, pursuant to Section 5.9.1 of this Agreement.

3.2.6. Dedication of Linear Park and Neighborhood Park.

Owner agrees to irrevocably offer for dedication the Linear Park and Neighborhood Park (described in greater detail at Section 5.9.2) prior to approval of the SPAR for the first Block of development adjacent to the Linear Park or the Neighborhood Park, respectively.

3.2.7. Dedication of Delaware Avenue Right of Way.

Owner agrees to irrevocably dedicate the right-of-way required to accommodate a temporary two-lane North-South Delaware pursuant to conditions further detailed in Section 5.10 of this Agreement. Owner also agrees to irrevocably offer to dedicate the right-of-way required to accommodate a two-lane North-South Delaware connection, adjacent to the JPB right-of-way, in the event Owner terminates Agreement as further detailed in Section 3.10 of this Agreement.

3.2.8. Traffic Calming Contribution.

Owner agrees to contribute $250,000 for neighborhood traffic calming prior to the issuance of the first building permit following the seventh (7th) anniversary of the Effective Date pursuant to Section 5.13 of this Agreement.

3.2.9. Limitation.

Notwithstanding the foregoing, or anything else in this Agreement to the contrary, by entering into this Agreement, Owner shall not be obligated to develop the Property.

3.3. Specific Plan. The Specific Plan adopted by the City in approving this Project and Agreement is attached hereto as Exhibit C. To the extent that Exhibit C is inconsistent with the Specific Plan as amended from time to time, the Specific Plan then in effect shall prevail. The Specific Plan may be amended from time to time upon application of Owner and approval of the City without amending this Agreement, unless the proposed amendment to the Specific Plan is inconsistent with an express provision of this Agreement, in which case this Agreement shall also be amended.

3.4. Subsequent Projects. Owner is concerned that City may approve other projects that place a burden on City's infrastructure without considering the prior approval of the Project. Therefore, City agrees that so long as Owner submits its First Phase applications, and commences Project development within the Term, Owner's right to build out and occupy all buildings in the Project shall not be diminished despite the burden of future development upon public facilities including, without limitation, roads, water systems, roadways, sanitary sewers, storm sewers, utilities, traffic signals, curb gutters, sidewalks, parks, amenities, recreation areas, landscaping, landfill, and other off-site improvements which are of benefit to the Project and other properties in the area.

3.5. Applicable Laws and Standards. Except as otherwise provided in this Agreement, the City Laws and conditions of approval governing permitted uses on the Property, density, height, design, occupancy and specifications applicable to the Project shall be the Existing City Laws (regardless of any future changes in the same made by City) and the conditions of approval set forth in this Agreement and the Project Approvals. City hereby agrees

that the Project can be built and occupied on the Property pursuant to the Existing City Laws and conditions of approval and in accordance with the provisions of this Agreement and the Specific Plan, provided that City may apply and enforce the construction, fire and building codes then in effect in City at the time Owner applies for building permits for the Project.

3.6. Other Governmental Permits. Owner shall apply for such other permits and approvals as may be required from 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 (including but not limited to any permits or approvals required from the California Department of Transportation and/or the U.S. Army Corps of Engineers in relation to any offsite sewer work). City shall cooperate with Owner in its endeavors to obtain such permits and approvals and, from time to time at the request of Owner, shall attempt with due diligence and in good faith to enter into binding agreements with any such entity in order to assure the availability of such permits and approvals or services. To the extent allowed by Law, Owner shall be a party or third party beneficiary to any such agreement entitled to enforce the rights of Owner or City thereunder or the duties and obligations of the Parties thereto.

3.7. Processing Fee. City may charge a Processing Fee for a permit or approval submitted by Owner, as the Processing Fee is in effect at the time of Owner's application for that permit or approval.

3.8. No Further Exactions. Except as provided in this Section 3.8 , Section 3.9 (Transportation Mitigation Fee) and Section 3.10 (Advance Payment of Transportation Mitigation Fee), City shall not impose any further or additional Exactions on the development of the Project, whether through the exercise of the police power, the taxing power,

design review or any other means, other than those set forth in the Project Approvals, the Mitigation Measures, the Existing City Laws and this Agreement. By way of clarification, the City's art fee shall not apply to the Project, but the childcare fee shall apply to development in the Project (provided that the City shall grant a credit against any applicable fee for the costs of childcare facilities provided within the Project). The amount of fees and monetary Exactions applicable to the Project as of the Effective Date are set forth in Exhibit D. Up to the sixth (6th) anniversary of the Effective Date, monetary Exactions applicable to the Project shall remain as in effect at the same amount or rate as of the Effective Date as specified in Exhibit D, provided that from and after the sixth (6th) anniversary of the Effective Date and each year thereafter, monetary Exactions applicable to the Project shall be calculated by multiplying the amount or rate in effect as of the Effective Date by the CPI Factor. The Exactions applicable to the Project as provided in the Specific Plan and this Agreement shall not be modified or renegotiated by City as a result of any amendment to the Specific Plan, the Project Approvals, the Approvals, or this Agreement which does not materially increase the density or intensity of development. Nothing in this Agreement is intended to prohibit City from exercising its taxing power in a manner which will not increase any fee or tax applicable to the Project. The Parties acknowledge that the provisions contained in this Section 3.8 are intended to implement the intent of the Parties that Owner have the right to develop the Project pursuant to specified and known criteria and rules, and that City receive the benefits which will be conferred as a result of such development without abridging the right of City to act in accordance with its powers, duties and obligations.

3.9. Transportation Mitigation Fee. At the time of issuance of building permits for development on the Property, Owner shall pay City's fair share transportation mitigation fee with respect to the portion of the Project for which building permits are sought.

The parties understand that City will update the "General Plan Traffic Mitigation Fee Program" to reflect City's portion of the costs of the grade separations to be constructed by the JPB at 28th Avenue and 31st Avenue to the approximate amount specified on Exhibit D ("Transportation Mitigation Fee Update"). Up to the sixth (6th) anniversary of the Effective Date, the transportation mitigation fee applicable to the Project shall remain as in effect at the same amount or rate as of the Effective Date, or if the Transportation Mitigation Fee Update has occurred before the sixth (6th) anniversary of the Effective Date, as revised as of the date of the Transportation Mitigation Fee Update, provided that from and after the sixth (6th) anniversary of the Effective Date and each year thereafter, the transportation mitigation fee shall be calculated by multiplying the amount or rate in effect as of the Effective Date (or the Transportation Mitigation Fee Update, as the case may be) by the CPI Factor.

3.10. Advance Payment of Transportation Mitigation Fee; Consideration for Early Termination.

(a) If, at any time on or after the sixth (6th) anniversary of the Effective Date, the following three conditions are satisfied:

(i) the grade separations at 28th Avenue and 31st Avenue are open to traffic,

(ii) the City has approved Owner's applications for Design Guidelines as well as Owner's applications for the First Phase, and

(iii) Owner has not demolished the grandstand improvements on the Property, or has otherwise not ceased all racing and betting operations on the Property,

then either:

(A) Owner shall make an advance payment to City of four million, six hundred thousand dollars ($4.6 million) in transportation mitigation fees (which

are to be applied against any future transportation mitigation fees payable for the Project) within thirty (30) days of the City providing written notice to Owner of the occurrence of the three conditions specified above, or

(B) if (x) Owner does not make such payment within thirty (30) days of such notice, and (y) Owner has not recorded any final map with respect to the Property, other than the final map recorded with respect to the Master Tentative Map, then this Agreement shall Terminate and as consideration for such Termination, Owner shall irrevocably offer to dedicate the right-of-way required to accommodate a two-lane North-South Delaware connection, adjacent to the JPB right-of-way ("Compensatory Right-of-Way"), designed in a manner to be compatible with the then existing uses on the Property. If Owner develops the Property prior to the City accepting and improving the Compensatory Right-of-Way, City shall quitclaim or reconvey to Owner the Compensatory Right-of-Way and Owner shall improve Delaware Street along the alignment contemplated by the Specific Plan Amendment. If this Agreement Terminates pursuant to this Section 3.10, notwithstanding any other provision of City Law or Law or this Agreement, the term of any unexpired Project Tentative Map or Future Map (as defined in section 4.2) shall expire. If the conditions of this Section 3.10(a)(i-iii) are satisfied, and the Owner has recorded any final map with respect to the Property (or any portion thereof), other than the final map recorded with respect to the Master Tentative Map, then Owner must make the payment specified in subsection 3.10(A), above, and the Agreement shall not Terminate.

(b) Owner shall notify City as to its utilization of any advance transportation mitigation fees at the time of applying for a SPAR.

3.11. Review and Processing of City Approvals. In connection with any approval, City shall accept applications for processing and review, and exercise City's discretion to take action, in a good faith manner which is as expeditious as administratively possible and which complies with and is consistent with the Project Approvals and this Agreement, and City shall approve any application for an approval (including but not limited to an application for Design Guidelines) which so complies and is so consistent with the Project Approvals and this Agreement. Owner recognizes that City retains discretion with respect to its approval of the Project's Design Guidelines, SPAR process, and consistency with the Specific Plan, provided that City shall exercise City's discretion in a manner which will not prevent the development of the Project for the uses, and with the heights, densities and intensities specified in the Project Approvals and this Agreement or with the rate of development, if any, specified in the Project Approvals. Owner, in a timely manner, shall provide City with all fees, charges, documents, applications, plans and other information necessary for City to carry out its obligations and cause its planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents. All applications for Approvals shall be filed in the manner required under the applicable City Laws, except that such applications shall contain the caption "SUBJECT TO THE BAY MEADOWS PHASE II DEVELOPMENT AGREEMENT" on the front sheet of such applications (provided that a failure to include such caption shall not have any legal effect). The Parties expressly intend to cooperate with one another and diligently work to implement all land use and building approvals for development of the Project in accordance with the Project Approvals.

3.12. Extension of Approvals. Upon approval of any Project Tentative Map and the First Phase approvals, the term of each shall be extended until the Termination of this Agreement notwithstanding any other City Law. Upon the approval of any other subdivision map (other than the Master Tentative Map), SPAR, variance or use permit, the term of such subdivision map (other than the Master Tentative Map), SPAR, variance or use permit shall extend for five (5) years from the date of approval, provided that approvals obtained in the last five (5) years of the Term shall extend for the greater of (a) the Term of the Agreement or (b) the maximum applicable time provided for under City Law.

3.13. Interim Uses.

The Project Approvals do and will provide a mechanism which will ensure that the Property shall be maintained in an aesthetically pleasing manner at a reasonable economic expense to Owner on an interim basis prior to and during the development of the Project.

4. Subdivision of Property.

4.1. Master Tentative Map. City approved the Master Tentative Map as of the date hereof. The Master Tentative Map does not and shall not permit any development of the Property (including issuance of building or demolition permits) unless and until the City has granted the following Approvals: (a) the Design Guidelines, (b) the First Phase approvals, and (c) the design and bonding for the Public Improvements to be constructed with the First Phase of the Project. The two parcels of the Master Tentative Map shall be held under a single ownership pursuant to a lot tie agreement to be recorded with the San Mateo County recorder, and such lot tie agreement shall remain in effect unless and until the Approvals described in the preceding sentence have been granted, and the grandstand and other existing on-site improvements have been demolished. Developer agrees if the First Phase of development has

not commenced prior to the expiration or earlier Termination of the Term, the two parcels created by the Master Tentative Map shall be merged.

4.2. Project and Future Tentative Maps. Owner shall have the right, from time to time or at any time, to apply for one (1) or more Project Tentative Maps, subdividing the Property into Blocks, as may be necessary in order to develop, lease or finance any portion of the Property in connection with development of the Project consistent with the density, Block and parcel sizes set forth in the Specific Plan. Each Block may be subdivided further into individual parcels through one or more future tentative maps ("Future Tentative Maps"). City may grant tentative approval of a Project Tentative Map or Future Tentative Map, but shall not grant final approval of any final Project Tentative Map, or Future Tentative Map before the pre-conditions for development (a, b, and c) in Section 4.1 (Master Tentative Map) have been satisfied.

4.3. Government Code Section 66473.7. Pursuant to Government Code section 65867.5, City has determined that this Agreement is not subject to the provisions of Government Code Section 65867.5 because the Master Tentative Map includes only two parcels, and in any event, the Master Tentative Map and any Project Tentative Maps are exempt from the requirements of Government Code section 66473.7, concerning water verifications, because the Project is a residential project proposed on a site within an urbanized area and has previously been developed for urban uses, and the immediate contiguous properties surrounding the Project site are, and previously have been, developed for urban uses, all within the meaning of Government Code section 66473.7(i).

5. Specific Criteria Applicable To Development Of The Project.

5.1. Application of New City Laws. Nothing herein shall prevent City from applying to the Property:

(a) new City Laws which do not conflict with this Agreement, the Project Approvals, the Approvals and Existing City Laws, as described in Section 5.2 (Conflicting Laws) below;

(b) new City Laws which are specifically mandated or required by changes in State or Federal Laws;

(c) City Laws that are applicable to the following and are in effect at the time Owner submits an application for a building permit for the Project:

(i) procedural requirements for building and building occupancy permit application, submittal and issuance;

(ii) construction standards pursuant to all Uniform Building Codes incorporated by the San Mateo Municipal Code;

(iii) engineering specifications for construction of any public improvements such as curbs, gutters and sidewalks, to the extent they do not conflict with the Project Approvals or Approvals;

(iv) building security requirements adopted pursuant to Title 23 of the San Mateo Municipal Code;

(v) any requirements applicable upon issuance of a building permit for which City acts as an administering agent for another governing agency; and

(vi) any sustainability mandates that are uniformly applied as a matter of adopted City requirements to all new construction of the type in question (i.e.

standards applicable to all commercial construction in the City shall apply to commercial development in the Project and standards applicable to all residential construction in the City shall apply to residential development in the Project).

5.2. Conflicting Laws. For purposes of Section 5.1 above (Application of New City Laws), any action or proceeding of the City (whether enacted by the legislative body or the electorate) that has any of the following effects on the Project shall be considered in conflict with this Agreement and the Existing City Laws:

(a) limiting or reducing the density or intensity of all or any part of the Project, or otherwise requiring any reduction in the square footage or total number of developable blocks, residential units or other improvements;

(b) limiting the timing or phasing of the Project in any manner inconsistent with this Agreement or the Project Approvals;

(c) limiting the location of structures, grading, streets or other improvements on the Property in a manner that is inconsistent with or more restrictive than the limitations included in the Project Approvals or this Agreement; or

(d) applying to the Project or the Property any law, regulation, or rule otherwise allowed by this Agreement which is not uniformly applied on a City-Wide basis to all substantially similar types of development projects or project sites in the City.

The above list of actions is not intended to be comprehensive, but is illustrative of the types of actions that would conflict with this Agreement and the Existing City Laws.

5.3. Timing. Without limiting the foregoing, no moratorium or similar limitation affecting building permits or other land use entitlements, or the rate, timing or sequencing thereof shall apply to the Project. This Agreement shall not preclude the application

to the Project of changes in City Laws, to the extent that such changes are specifically required to be applied to developments such as this Project by changes in applicable Laws.

5.4. Subsequent Environmental Review. The provisions of CEQA, as they may be amended from time to time, shall apply to any subsequent Approval for the Project. The Parties acknowledge, however, that the EIR contains a thoroughgoing analysis of the Project and Project alternatives and specifies the feasible Mitigation Measures available to eliminate or reduce to an acceptable level adverse environmental impacts of the Project, and acknowledge that the City Council issued a statement of overriding considerations in connection with the Project Approvals, pursuant to 14 California Code of Regulations (CEQA Guidelines) Section 15093. The EIR provides an adequate database and environmental analysis for the decision to proceed with the Project embodied in the Project Approvals and this Agreement, and subsequent development of the Project during the Term of this Agreement. The Mitigation Measures imposed are those appropriate for the implementation of proper planning goals and objectives and the formulation of Project development guidelines and conditions of approval. For these reasons, no EIR shall be required by City for any subsequent Approvals implementing the Project unless the provisions of Public Resources Code § 21166 apply.

5.5. Easements; Improvements; Abandonments. City shall reasonably cooperate with Owner in connection with any arrangements for abandoning existing utility or other easements and facilities and the relocation thereof or creation of any new easements within the Property necessary or appropriate in connection with the development of the Project; and if any such easement is owned by City or an agency of City, City or such agency shall, at the request of Owner, take such action and execute such documents as may be reasonably necessary to abandon existing easements and relocate them, as necessary or appropriate in connection with

the development of the Project in accordance with the Project Approvals. All improvements required as Exactions pursuant to the Project Approvals shall be constructed by Owner congruent with each phase of the Project, as such improvements relate thereto and are necessary with respect to such phase of the Project development.

5.6. Design of On-Site and Off-Site Improvements. Development of the Property shall be subject to SPAR and other future City review as provided by the Project Approvals. The Project Approvals, and all improvement plans prepared in accordance with the Project Approvals, shall govern the design and scope of all on-site and off-site improvements to be constructed on or benefiting the Property, including all street widths and dedications.

5.7. Single Integrated Development. City and Owner acknowledge that the Project is and shall be considered a single integrated development project, and that the dedications for Public Improvements are an integral part of the Project.

5.8. Public Improvements. Owner shall undertake the design, development and installation of, and dedicate to City (or a transferee specified by City), or the applicable responsible agency, the Public Improvements required to be constructed by Owner pursuant to the Project Approvals, in accordance with the provisions of this Section 5.8. The Public Improvements shall be designed and constructed, and shall contain those improvements and facilities specified in the Project Approvals and other City Laws, and/or as required by responsible agencies having jurisdiction. The City Manager shall have the right to impose further implementing conditions in connection with any Approval in order to insure compliance with the provisions of this Section 5.8 and the other applicable provisions of this Agreement with respect to the provision of the Public Improvements, including the timing thereof and relationship to development of the Project, provided that such conditions are not inconsistent

with the Project Approvals or this Agreement and do not prevent the development of the Project for the uses, and with the heights, densities and intensities specified in the Project Approvals and this Agreement. Owner shall obtain such permits and approvals (including review of design and construction plans) from all responsible agencies having jurisdiction over the Public Improvements as applicable, and shall provide evidence reasonably satisfactory to City of attainment of all such permits and approvals prior to the commencement of construction or installation of any affected Public Improvements. During the SPAR process, City shall identify those Public Improvements (or portion thereof) associated with the portion of development approved in the SPAR. Once completed in accordance with City Law, City will accept those Public Improvements.

5.8.1. Phasing. The Parties acknowledge that (i) the need for infrastructure is related to the actual construction of occupied areas and (ii) the timing of infrastructure expenditures has significant economic effect. Therefore the Project Approvals include conditions of approval related to phasing, linking infrastructure improvements (both on- and off-site) with development of occupied areas as described in the Project Approvals. The City Manager shall be authorized to implement and modify the phasing conditions, as may be mutually agreed to by Owner, so as to implement the intention of this Section 5.8.1.

5.8.2. Stormwater. The Project Approvals provide for a 4-acre dry storage area in the area designated as the Community Park. After dedication of the Community Park, City shall maintain the dry storage area in accordance with covenants, conditions and restrictions ("CC&Rs") to be recorded with the County recorder. The CC&Rs are to be mutually agreed upon by the Parties, and provide for the maintenance and operation performance standards necessary for the functioning of the dry storage areas in accordance with

the Project Approvals. Except as otherwise required by the Regional Water Quality Control Board, City agrees to honor and perform any obligations imposed upon it under the CC&Rs. In addition, the Parties acknowledge that a wet storage area shall be provided through the creation of a stormwater retention pond in the Community Park.

5.8.3. Rough Grading. Owner shall be responsible for the rough grading of the site and location for each Public Improvement located within the Property (including the dry storage area, but not the remainder of the 12-acre Community Park if the City has elected to take the cash payment for park improvements specified in Section 5.9.1 below), and for the rough grading of any off-site location for a Public Improvement, if Owner is obligated under the Project Approvals to construct such Public Improvements at such off-site location.

5.8.4. Improvement Agreements and Security. Owner shall enter into an improvement agreement providing for the design, construction and installation of any Public Improvements to be made, constructed or installed as required under the Project Approvals. Owner shall post security for the performance of Owner's obligations under each such improvement agreement in the amount of the construction cost for each Public Improvement as determined by City (or responsible agency, if applicable) under the applicable City Law (or responsible agency regulations).

5.8.5. Off-site Public Improvements.

Subject to the Project Approvals, Owner shall design, construct and install, or cause the design, construction and installation of, all off-site Public Improvements. Owner shall be responsible for obtaining such approvals, permits and other agreements, and

entering into such contractual arrangements, as may be necessary or appropriate to construct the off-site Public Improvements.

5.9. Parks and Open Space. Owner shall provide 15 acres of land for public parks as specified in the Project Approvals, regardless of the number of residential units ultimately constructed at build-out. No additional park fees (in-lieu or otherwise) shall be payable with respect to the Project. The park land to be dedicated pursuant to the Project Approvals shall constitute full pre-payment and satisfaction of any park fees for the Project.

5.9.1. Timing of Dedication and Interim Improvements

Within two (2) years after Owner's Election to Discontinue Racing, Owner shall irrevocably offer to dedicate approximately 12 acres of land adjacent to Saratoga Drive as a community park ("Community Park"). Prior to acceptance of the offer to dedicate the Community Park, Owner may use the site of the Community Park for staging of construction activities. The timing for the dedication of the parks shall be as specified in the Project Approvals. Programming for the Community Park shall be determined by the City. However, as additional consideration for this Agreement, the Owner agrees to design and construct interim improvements to the Community Park consisting of one regulation baseball field and one regulation soccer field, utilizing grass turf, in the Community Park so as to provide immediately usable park land upon dedication. Owner's improvements shall not include lights, sidewalks or other permanent park infrastructure, with the exception of restroom facilities which may, if mutually agreeable to the City and Owner, be included as part of the interim park improvements. Depending on the timing of the City's design process for the Community Park, the City may, at its election, forego the provision of the park improvements by Owner, and instead elect to

receive a $1 million contribution towards the development of final park improvements in accordance with the City's ultimate design.

5.9.2. Dedication and Designation of Linear Park and Neighborhood Park.

Owner shall irrevocably dedicate 1.5 acres of land as a "Linear Park" and 1.5 acres of land as a "Neighborhood Park" as a condition of approval of the SPAR for the first Block of development adjacent to the Linear Park and the Neighborhood Park, respectively. The SPAR conditions of approval shall specify the precise timing for the dedication and when the park improvements must be completed, taking into account the staging needs for adjacent development. Interim construction staging for adjacent development shall be permitted on the Linear Park and Neighborhood Park sites.

5.9.3. Maintenance of Open Space and Dedicated Parks.

Owner shall maintain or cause a property owner's association or similar entity to maintain all landscaping, medians and open space except for the 15 acres of public parks dedicated to the City (which shall be maintained by the City at it expense). City shall grant Owner or Owner's successor, agent, contractor or subcontractor a right of entry or encroachment permit to maintain the landscaping on publicly-owned medians in the Specific Plan Amendment area.

5.10. Delaware Street. Owner acknowledges that the completion of Delaware Street through the Property will complete the City's north-south street grid as shown on the City's General Plan. If the City has approved the Owner's Design Guidelines, and the First Phase approvals, then upon the request of the Public Works Director, Owner shall dedicate the right-of-way required to accommodate a temporary two-lane North-South Delaware connection, adjacent to the JPB right-of-way, designed in a manner to be compatible with the

then existing uses on the Property. The City shall pay for the costs to design and construct the temporary Delaware connection. At such time as the Project Approvals require the construction of Delaware Street as described in the Specific Plan, the Owner, at its own expense, shall demolish the temporary Delaware connection and design and construct the permanent Delaware Street improvements in accordance with the Project Approvals.

5.11. Community Facilities District. At the request of the Owner, the City shall pursue the use of a Community Facilities District ("CFD") for financing the payment of capital improvement costs associated with the Public Improvements. Subject to market conditions and fiscal prudence, the City shall use its best efforts to form such a CFD and issue and sell bonds in connection therewith. Owner shall consent to the formation of the CFD prior to the recordation of the first Project Tentative Map for the Project.

5.12. Minimum Ten Percent Below Market Rate Units; Property Set-Aside for Additional BMR Units.

(a) In accordance with Existing City Laws, including Measure P, Owner shall set aside an amount of units equal to 10 percent (10%) of all newly constructed residential units for occupancy by and being affordable to moderate or lower income households ("BMR Units"). Notwithstanding any provision in the City's Below Market Rate (Inclusionary) Program in effect as of the Application Date and attached as Exhibit E, the 10% percent requirement shall be applied on a Block by Block basis. Since SPARs will be required on a Block-by-Block basis, the Block constitutes the development project "site" for purposes of applying the BMR requirements. The BMR Units shall be spread throughout each product type, provided that at Owner's election, up to two hundred fifty (250) newly constructed residential units may have their associated BMR Units located in a different building or parcel on that same Block, but

spread throughout those buildings on the same Block . All BMR Units shall have exterior design and appearance compatible with and substantially the same as buildings in which they are located. They shall also have similar access to the unit from the exterior as comparable market rate units in the building in which they are located. Construction of such BMR Units must have commenced by the time of issuance of the first certificate of occupancy for any associated market rate unit on the relevant Block, and diligently pursued to completion.

(b) In addition, Owner shall provide to the City (or to a public or non-profit housing developer of City's choice), at no cost to the City, approximately one acre of land, located in a Mixed-Use Block (with the precise location to be determined at Owner's sole election), to be developed by the City, or the designated public or non-profit agency, solely for low, very low, or moderate income housing, and designed in accordance with the Specific Plan Amendment and the Design Guidelines. The Owner shall designate the parcel and offer it to the City within six (6) months after the commencement of construction of the main street section of Delaware. Prior to transfer of title to the one acre parcel, a restrictive covenant requiring the use of the property for low, very low or moderate income housing shall be recorded in favor of Owner and its assigns, which covenant shall include a power of termination in favor of Owner and its assigns should the terms of the covenant not be met. The obligations in this Section 5.12 implement the City's desire to see an increased number of units in the Project set aside as BMR Units. Except as modified by this Agreement Owner shall comply with City's Below Market Rate (Inclusionary) Program in effect as of the Application Date and attached as Exhibit E.

5.13. Waiver of Density Bonus.

Except with respect to the one acre of land that Owner dedicates to the City for purposes of the development of BMR Units in accordance with Section 5.12 of this Agreement, Owner, on

behalf of itself and any assignee or successor in interest, waives any rights, as provided under state low and moderate income density bonus laws as they exist at the date of execution of this Agreement or at any time during the Term of this Agreement, to develop the Property or any portion thereof at residential densities greater than those allowed under the Project Approvals.

5.14. Traffic Calming Contribution.

Owner shall contribute $250,000 for neighborhood traffic calming. This contribution is in addition to the Traffic Mitigation Fee to be paid by the applicant, which also includes funding for traffic calming. The contribution shall be made as a condition to the issuance of the first building permit following the seventh (7th) anniversary of the Effective Date.

5.15. Contribution to Public Art.

In recognition that the City's public art ordinance is not otherwise applicable to the Project, Owner shall contribute One Million Dollars ($1,000,000) to the City to be used for public art and an additional Fifty Thousand Dollars ($50,000) to City Arts of San Mateo to be utilized for funding a campaign for the arts, all as provided for in this section 5.15. The contribution to San Mateo City Arts shall be made no later than ninety (90) days after the Effective Date of this Agreement. The public art contribution shall be made to the City in the following manner: (a) payment of Three Hundred Fifty Thousand Dollars ($350,000) shall be made to the City on the day the Owner sends written notice to the City that Owner accepts the provisions and terms of the Design Guidelines and the First Phase approvals, as specified in Section 5.19 of this Agreement; (b) Two Hundred Fifty Thousand Dollars ($250,000) shall be used by Owner in the development of public art in the Town Square to be developed in accordance with the Specific Plan; (c) payment of One Hundred Thousand Dollars ($100,000) shall be made to the City during the Term of this Agreement on each of the fifth (5th), tenth

(10th), and fifteenth (15th) anniversaries of the commencement of the Term; and (d) a final payment of One Hundred Thousand Dollars ($100,000) shall be made to the City upon the expiration of the eighteenth (18th) year of the Term of this Agreement . All payments to the City shall only be used for art to be located within the Project. The selection and placement of public art shall be determined by a process established by the City, subject to the reasonable approval of Owner. Art proposed to be located on private property will be determined by a process that includes the property owner such that the nature and placement of any art must be approved by the Owner.

5.16. Contribution to Improve Casanova Park

The Owner shall contribute One Hundred Thousand Dollars ($100,000) to the City to be used to improve Casanova Park in the Glendale Village neighborhood of the City. Payment of One Hundred Thousand Dollars ($100,000) shall be made to the City on the earlier to occur of (a) the date on which (i) the Effective Date has occurred and (ii) the City sends Owner notice that it requires the contribution to complete or reimburse the City for the contemplated park improvements, or (b) the date the Owner sends written notice to the City that Owner accepts the provisions and terms of the Design Guidelines and the First Phase approvals, as specified in Section 5.19 of this Agreement.

5.17. Contribution to Fiesta Gardens Homeowners Association.

The Owner shall contribute One Hundred Thousand Dollars ($100,000) to the Fiesta Gardens Homeowners' Association to be used for planning, design and implementation of aquatic improvements in Fiesta Gardens parks. Payment of One Hundred Thousand Dollars ($100,000) shall be made to the Fiesta Garden Homeowners' Association on the day the Owner

sends written notice to the City that Owner accepts the provisions and terms of the Design Guidelines and the First Phase approvals, as specified in Section 5.19 of this Agreement.

5.18. Green Building Demonstration Project.

The Owner shall construct, or cause at least one residential building in the Project to be constructed, in a manner that will achieve a LEED Silver Certification, or its equivalent. This demonstration project will contain at least 30 units (which units are expected to be all market rate units) and will be developed within the first 400 residential units developed in the Project.

5.19. Prohibition on Expanded Gaming.

Owner agrees that from and after the Effective Date and until the earlier to occur of (a) the second anniversary of the date Owner makes application for Design Guidelines, and (b) the City's approval of Owner's application for the First Phase approvals, Owner shall not permit the use of the Property for slot machines, video lottery terminals, or any other forms of expanded gaming at the track, other than wagering on horse racing. Upon the City's approval of (a) Owner's application for Design Guidelines and (b) Owner's applications for the First Phase, and the final conclusion (as defined in Section 1.51) of any legal proceeding(s) with respect thereto, Owner shall have ninety (90) days to send written notice to the City that Owner accepts the provisions and terms of the Design Guidelines and the First Phase approvals. If Owner accepts the terms and conditions thereof, then Owner shall record a covenant against the Property restricting the use of the Property so as to prohibit the right to operate slot machines, video lottery terminals, or any other forms of expanded gaming at the track, other than wagering on horse racing , in perpetuity. Notwithstanding any other provision of this Agreement, if within the ninety day period specified in this Section 5.19, Owner notifies City that it does not accept the provisions and terms of the Design Guidelines or First Phase approvals, then this Agreement

shall Terminate and there shall be no further prohibition on expanded gaming at the Property. Upon Termination pursuant to this Section 5.19, notwithstanding any other provision of City Law or Law, any unrecorded tentative maps, shall expire. In no event shall any final map, with respect to any Project Tentative Map, be recorded unless and until the Owner has accepted the provisions and terms of the Design Guidelines and First Phase approvals.

5.20. Loss of Racing Revenue.

The Owner agrees to pay a maximum of $300,000 annually to the City to compensate for the loss of net revenues to the City from the Property should Owner delay the commencement of development of the Property following Owner's Election to Discontinue Racing. The first annual payment (if any) shall be due the later to occur of (a) the date the City has approved Owner's applications for Design Guidelines and Owner's applications for the First Phase, and (b) the second anniversary of the Owner's Election to Discontinue Racing, provided that no payment shall be due from and after the time a building permit with respect to any development on the Property has been issued, and work in accordance with that permit has commenced. In addition, and notwithstanding any other provision in this Agreement, any annual payment to the City shall be net of general revenues (not including processing or similar fees) the City derives from the Property from any source after the Effective Date (including, but not limited to, property taxes, transfer taxes, fees, and sales taxes).

6. Periodic Review of Compliance.

6.1. Annual Review. Each year during the Term of this Agreement, City and Owner shall review this Agreement, and all actions taken pursuant to the terms of this Agreement, in accordance with the provisions of this Article 6.

6.2. Owner's Submission. Not less than thirty (30), nor more than sixty (60), days prior to the first (1st) anniversary of the Effective Date of this Agreement, and each anniversary date thereafter, Owner shall submit to the City Clerk, with a copy to the Director, a letter setting forth Owner's good faith compliance with the terms and conditions of this Agreement and a request that review of such compliance by the Planning Commission be made in accordance with law. Such letter shall be accompanied by such documents and other information as may be reasonably necessary and available to Owner to enable the Planning Commission to undertake the annual review of Owner's good faith compliance with the terms of this Agreement, and shall also state that such letter is submitted to City pursuant to the requirements of Government Code § 65865.1, and Section 8(a) of the Development Agreement Resolution.

6.3. Finding of Compliance. Within forty-five (45) days after Owner submits its letter, the City shall review the Owner's submission to ascertain whether it contains sufficient information to determine whether Owner has complied in good faith with the terms of this Agreement. Upon request of the City, Owner shall furnish such additional documents or information as may be reasonably required and available to Owner to enable the Planning Commission to make and complete its review hereunder. At the first available duly noticed regular meeting following receipt of all information requested by the City (if any), the Planning Commission shall determine the good faith compliance by Owner with the terms of this Agreement, in accordance with the provisions of this Article 6 and Section 8(a) of the Development Agreement Resolution and Government Code Section 65865.1. At least five (5) days prior to rendering a decision, the City shall provide to Owner copies of all staff reports and other information concerning Owner's compliance with the terms of this Agreement. If the

Planning Commission finds good faith compliance by Owner with the terms of this Agreement, upon request by Owner, the City Manager shall provide to Owner written confirmation of such finding.

6.4. Finding of Noncompliance/Danger to Health and Safety. If the Planning Commission, on the basis of substantial evidence, finds that the Owner has committed an Event of Default, or that the failure of the City to terminate or modify the provisions of this Agreement would place the residents of the territory subject to this Agreement or the residents of the City, or both, in a condition dangerous to their health and safety (hereafter, "Danger to Health and Safety"), it shall specify on the record the respects in which Owner has failed to comply or the factual basis for a finding of Danger to Health and Safety. The Planning Commission shall also specify a reasonable time for Owner to meet the terms of compliance, which time shall be not less than thirty (30) days, and shall be reasonably related to the time necessary for Owner to adequately bring its performance into good faith compliance with the terms of this Agreement. If the areas of noncompliance specified by the Planning Commission are not perfected within such reasonable time limits prescribed, then upon recommendation of the Planning Commission, this Agreement shall be subject to modification or cancellation by the City Council pursuant to this Agreement and the provisions of Section 8 of the Development Agreement Resolution. Similarly, upon a finding of Danger to Health and Safety, the Planning Commission shall make recommendations to the City Council regarding modifications to or termination of this Agreement, pursuant to this Agreement and the provisions of Section 8 of the Development Agreement Resolution.

6.5. Appeals to City Council. If Owner appeals a determination of noncompliance hereunder to the City Council or the Planning Commission makes a finding of

Danger to Health and Safety, both as specified in Section 8 of the Development Agreement Resolution, then the City Council shall schedule the hearing thereon not earlier than thirty (30) days and not more than sixty (60) days after Owner files its notice of appeal or the date the Planning Commission renders its decision, whichever is later. If, after receipt of any written response of Owner, and after considering all of the written and oral evidence at such public hearing, the City Council finds and determines on the basis of substantial evidence that the Owner has not complied in good faith with the terms and conditions of this Agreement, then the City Council shall specify to Owner the respects in which Owner has failed to comply, and shall also specify a reasonable time for Owner to meet the terms of compliance, which time shall be not less than thirty (30) days and shall be reasonably related to the time necessary for Owner to adequately bring its performance into good faith compliance with the terms of this Agreement. If the areas of noncompliance specified by the City Council are not perfected within such reasonable time limits herein prescribed, then the City Council may by noticed hearing terminate, modify or take such other actions as may be specified in Section 8 of the Development Agreement Resolution. Similarly, if after receipt of any written response of Owner, and after considering all of the written and oral evidence at such public hearing, the City Council finds and determines on the basis of substantial evidence that failure of the City to terminate or modify the Agreement will constitute a Danger to Health and Safety, then the City Council may terminate or modify this Agreement in accordance with this Agreement and Section 8 of the Development Agreement Resolution.

6.6. Miscellaneous Requirements in Connection With Annual Review.

In the event that City fails to either (a) conduct the annual review after Owner has met its submission requirements under Section 6.2 (Owner's Submission), or (b) thereafter notify Owner

in writing of City's determination as to compliance or noncompliance with this Agreement, and after having been provided written notice by Owner of City's failure to conduct that annual review or make such determination regarding this Agreement and such failure remains uncured as of December 31 of any year during the Term of this Agreement, Owner shall be deemed in compliance with the terms of this Agreement until such time as the annual review has taken place and City has notified Owner of its determination.

6.7. Standards. Each annual review hereunder shall, to the extent applicable, be subject to the demonstration of compliance by Owner through ascertainable standards of professional disciplines having the requisite experience and expertise within the subject matter under review, in order that Owner will have the ability, to the extent applicable, to demonstrate compliance on an objective basis through information or other data prepared by Owner and its consultants and submitted with its annual statement of compliance hereunder. Nothing in this Section 6.7 shall be construed to limit City's discretion in making a determination based on substantial evidence, as to whether Owner is in good faith compliance or whether failure of the City to terminate or modify the Agreement will constitute a Danger to Health and Safety.

6.8. Effect on Transferees. If Owner has effected a transfer so that its interest in the Property has been divided between more than one (1) Party, then the annual review hereunder shall be conducted separately with respect to each such Party, and the Planning Commission and/or City Council shall make its determinations and take its actions as authorized and required separately with respect to each such Party. If the City Council Terminates, modifies or takes such other actions as may be specified in Section 8 of the Development Agreement Resolution in connection with a determination that such Party has not complied in

good faith with the terms and conditions of this Agreement, such action shall be effected only as to the Party as to whom the determination is made and the portions of the Property in which such Party has an interest, unless the Planning Commission and/or the City Council in its resolution of Termination, modification or other action further limits the scope of its determination.

6.9. Event of Default. The rights and powers of the City Council under this Article 6 are in addition to, and shall not limit, the rights of the City to modify, Terminate or take other action under this Agreement on account of the commission by Owner of an Event of Default.

7. Permitted Delays; Supersedure by Subsequent Laws.

7.1. Permitted Delays. In addition to any specific provisions of this Agreement, performance by either Party of its obligations hereunder shall be excused during any period of delay, to the extent that delay is an actual cause of default, caused at any time by reason of acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, shortage of materials or supplies, or damage to work in process by reason of fire, floods, earthquake, or other casualties, restrictions imposed or mandated by governmental or quasi-governmental entities, enactment of conflicting Laws (including, without limitation, new or supplementary environmental regulations), litigation, acts or neglect of the other Party, or any other cause beyond the reasonable control of a Party. Each Party shall promptly notify the other Party of any delay hereunder as soon as possible after the same has been ascertained. The Parties shall then meet and confer reasonably and in good faith to determine how to respond to the delay so as to meet the purposes and intent of this Agreement. The Term of this Agreement shall be extended by the period of any delay hereunder, not to cumulatively exceed seven (7) years.

7.2. Subsequent Laws. If any Laws made or enacted after the Effective Date of this Agreement prevent or preclude 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 and confer reasonably and 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 , then Owner shall have the right to terminate this Agreement by written notice to City. In addition, at Owner's election, the Term of this Agreement may be extended

pursuant to Section 7.1 above for the duration of the period during which such new Law precludes compliance with the provisions of this Agreement for a period not to exceed 24 months. Owner shall also have the right to challenge the new Law preventing compliance with the terms of this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect, except that the Term shall be extended by such challenge pursuant to Section 7.1 above and the provisions of this Section 7.2.

8. Events of Default; Remedies; Termination; Attorneys' Fees.

8.1. Events of Default. Subject to any extensions of time by mutual consent in writing, and subject to the provisions of Section 7.1 regarding permitted delays, any failure by either Party to perform any material term or provision of this Agreement (including any failure to comply in good faith with the terms of this Agreement) shall constitute an event of default ("Event of Default"), (a) if such defaulting Party does not cure such failure within thirty (30) days following notice of default from the other Party, where such failure is of a nature that can be cured within such thirty (30) day period, or (b) if such failure is not of a nature which can be cured within such thirty (30) day period, the defaulting Party does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure.

8.2. Remedies. Upon the occurrence of an Event of Default, the nondefaulting Party may not exercise any rights or remedies unless and until it has first requested in writing that the Parties schedule a meeting to occur before a neutral mediator no later than thirty (30) days following such notice, to mediate and resolve the dispute. The nondefaulting Party shall submit a list of three neutral mediators provided by ADR Services, Inc. – San Francisco (or some other mediation services organization agreeable to both Parties) and dates the

mediators are available at the time it requests the meeting. The defaulting Party shall select the neutral mediator from the list provided. If the dispute is not resolved within forty-five (45) days after the nondefaulting Party has requested a meeting, and the nondefaulting Party has provided at least three (3) available business days for such meeting at which its own representative and the neutral mediator are available at a location within the City of San Mateo, regardless of whether the Parties have actually met to mediate the dispute, the nondefaulting Party shall have the right, in addition to all other rights and remedies available at law or in equity, to (a) bring any proceeding in the nature of specific performance, injunctive relief, declaratory relief, or mandamus, and/or (b) bring any action at law or in equity as may be permitted by any Law or this Agreement to compensate the nondefaulting Party for all the detriment proximately caused by the defaulting Party's failure to perform, or otherwise arising out of the Event of Default, or which in the ordinary course of things would be likely to result therefrom, provided however that (i) Owner shall not have the right to recover monetary damages (compensatory or consequential) against City, and (ii) City shall only have the right to recover actual, direct (and not consequential) damages against Owner. In addition, upon the occurrence of an Event of Default, the nondefaulting Party shall have the right to Terminate this Agreement pursuant to Section 8.3, but any such Termination shall not affect such Party's right to seek any remedy permitted by this Agreement on account of the Event of Default for which this Agreement has been terminated.

8.3. Standards for Termination; Procedure on Termination.

8.3.1. Standards. A Party may Terminate this Agreement pursuant to Section 8.1 above on account of the commission by the other Party of an Event of Default only if, as a result of such Event of Default, the Party seeking to Terminate demonstrates, on the basis of substantial evidence in the record as a whole, that it will be deprived of a material benefit under this Agreement.

8.3.2. Procedure for Termination. If a Party concludes that it has the right to Terminate this Agreement pursuant to Section 8.3.1, such Party shall give to the other Party notice of its intent to Terminate this Agreement. If City is the Party seeking to Terminate this Agreement, City shall then conduct a noticed public hearing before the City Council which public hearing shall be scheduled for the first regularly-scheduled meeting of the City Council after the giving of public notice of such hearing in accordance with the applicable City Laws and applicable Laws; and such notice of public hearing shall be given by City within thirty (30) days following the date City gives notice of its intent to Terminate this Agreement. At such hearing City shall demonstrate on the record the grounds and basis on which it claims the right to Terminate under Section 8.3.1 above. Upon conclusion of such public hearing, the City Council shall direct the City Manager to take whatever action the City Council deems necessary or appropriate in connection with City's notice of intent to Terminate, including to proceed with Termination of this Agreement, proceedings for modification of this Agreement , or any other action specified by the City Council in the exercise of its discretion. The public hearing hereunder shall be concluded within sixty (60) days after it has been opened by the City Council and the holding of such public hearing hereunder shall be a condition to the initiation by City of any proceeding at law or in equity in connection with a Party's Termination of this Agreement on

account of an Event of Default. If Owner is the Party exercising a right of Termination, Owner shall give City at least 45 days notice of its intent to Terminate. During the 45 day period, the Parties shall exercise good faith in attempting to resolve the conflict. If the matter cannot be resolved, only after expiration of the 45 day period may Owner Terminate this agreement. Such Termination shall be made by sending written notice thereof to the City.

8.3.3. Effective Date of Termination. Termination of this Agreement by a Party on account of an Event of Default shall be effected on the later of (i) the date specified or required to be specified in a Party's notice of intent to Terminate, or (ii) in the case of the City, thirty (30) days after the conclusion of the public hearing pursuant to Section 8.3.2 above unless, as a result of such public hearing, the City determines to take actions as an alternative to or in lieu of Termination, in which event City shall not have the right to Terminate this Agreement unless and until it has given a subsequent notice of intent to Terminate pursuant to this Section 8.3.3.

8.3.4. Judicial Proceeding to Challenge Termination. Any challenge to a Party's Termination of this Agreement on account of an Event of Default by the other Party shall be subject to review in the Superior Court of the County of San Mateo pursuant to California Code of Civil Procedure § 1094.5(c) or other applicable law. Any challenge to a Party's claim that an Event of Default has occurred (which does not involve a purported Termination of this Agreement) shall be subject to review in the Superior Court of San Mateo County pursuant to California Code of Civil Procedure § 1094.5 or other applicable law, and such Court shall determine the appropriate standard of review.

8.4. Effect of Termination. If a Party Terminates this Agreement, such Termination shall not affect any right or duty emanating from any Approvals with respect to the

Project or Property approved concurrently or subsequently to the approval of this Agreement, but the rights, duties and obligations of the Parties hereunder shall otherwise cease as of the date of such Termination. Upon Termination of this Agreement, City shall retain any and all benefits, including money or land, previously received by City or that should have been received by City as of the date of Termination under or in connection with this Agreement. Notwithstanding the foregoing provisions, no Termination of this Agreement shall prevent Owner from completing and occupying buildings or other improvements authorized pursuant to valid building permits or certificates of occupancy previously approved by City or under construction at the time of Termination, unless the reason giving rise to the Termination independently affects such building permits or certificates of occupancy. As used herein, "construction" means work under a valid permit, and "completing" means completion for beneficial use or occupancy by Owner, or if a portion of the Project is intended for use by a lessee or tenant and the lessee or tenant is responsible for completing the interior improvements, then for such portion "completing" shall mean such completion except for interior improvements, such as partitions, duct and electrical runouts, floor coverings, wall coverings, lighting, furniture, trade fixtures, finished ceilings, and other improvements typically constructed by or for tenants of buildings.

8.5. Limitations on Actions. Any action by any third Person to attack, review, set aside, void or annul any action or decision taken by either Party under this Agreement shall not be maintained by such Person unless such action or proceeding is commenced within ninety (90) days after the date such decision or action is made or taken hereunder, or such shorter period as is prescribed by Law.

8.6. Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, irrespective

of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of an Event of Default shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such Event of Default. No express written waiver of any Event of Default shall affect any other Event of Default, or cover any other period of time, other than any Event of Default and/or period of time specified in such express waiver. All of the remedies permitted or available to a Party under this Agreement, or at law or in equity, shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

8.7. Attorneys' Fees. Attorneys' fees in an amount not exceeding eighty-five dollars ($85) per hour per attorney, and in total amount not exceeding five thousand dollars ($5,000), shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. "Prevailing Party" within the meaning of this Section 8.7 shall include, without limitation, a Party who dismisses an action for recovery hereunder or a portion thereof in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action. The above five thousand dollar ($5,000) limit is the total of attorneys' fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this Agreement that neither Party shall have to pay the other more than five thousand dollar ($5,000) for attorneys' fees arising out of an action, or actions to enforce the provisions of this Agreement.

8.8. No Third Party Beneficiaries. City and Owner hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any Person third party beneficiary status. If any action or proceeding is instituted by any third Person challenging the validity of any provision of this Agreement, or any action or decision taken or made hereunder, the Parties shall cooperate in defending such action or proceeding.

8.9. Effect of Court Action. If any court action or proceeding is brought by any third Person to challenge any Approval, this Agreement, or any other permit or approval required from City or any other governmental entity for development or construction of the Project, or any portion thereof, and without regard to whether or not Owner is a party to or real party in interest in such action or proceeding, then if such court action or proceeding is likely to materially affect the timing or cost of development such as to threaten the economic feasibility of the Project, Owner shall have the right to terminate this Agreement upon thirty (30) days' notice in writing to City, given at any time during the pendency of such action or proceeding, or within ninety (90) days after the final determination therein (including any appeals), irrespective of the nature of such final determination, and (b) any such action or proceeding shall constitute a permitted delay under Section 7.1.

8.10. Estoppel Certificate. Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (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, and if so amended, identifying the amendments, and (c) 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. The Director shall have the right to execute any certificate requested by Owner hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

9. Mortgagee Protection; Certain Rights of Cure.

9.1. Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any Person (including any Mortgagee) who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

9.2. Mortgagee Not Obligated. Notwithstanding the provisions of Section 9.1 above, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement, or otherwise under City Laws.

9.3. Notice of Default to Mortgagee; Right of Mortgagee to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Owner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any notice of an Event of Default or determination of noncompliance given to Owner. Each Mortgagee shall have the right (but not

the obligation) for a period of ninety (90) days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in the City's notice. If the Event of Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall thereafter remedy or cure the Event of Default or noncompliance within ninety (90) days after obtaining possession. If any such Event of Default or noncompliance cannot, with diligence, be remedied or cured within such ninety (90) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Event of Default or noncompliance (including but not limited to proceeding to gain possession of the Property) if such Mortgagee commences cure during such ninety (90) day period, and thereafter diligently pursues completion of such cure to the extent possible.

9.4. Right of City to Cure. If Owner defaults under any Mortgage, then City shall have the right, but not the obligation, to cure such default prior to completion of any foreclosure or any proceeding to terminate the interest of Owner in the Property. If City invokes its right to cure hereunder, City shall be entitled to reimbursement from Owner of all costs and expenses incurred by City in curing such default. City shall also be entitled to a lien upon any of the Property, or portion thereof, encumbered by the Mortgage with respect to which Owner has defaulted, to the extent of such costs and disbursements.

10. Transfer and Assignment.

10.1. Assignment.

Owner shall obtain City's prior written consent to assign or transfer any of its obligations, at any time before both of the following has occurred: (a) the City has approved the Design Guidelines; and (b) the City has approved the First Phase applications. Further, Owner may not assign or transfer any of its obligations to (a) construct an off-site force main (pursuant to the Project Approvals), (b) pay City $4.6 million in transportation mitigation fees (pursuant to Section 3.10), (c) dedicate the Community Park to City (pursuant to Section 5.9 (Parks) and the Project Approvals), (d) construct 28th Avenue, 31st Avenue and Delaware Street (pursuant to the Project Approvals), (e) dedicate land for City to construct Delaware Street if the Project does not proceed (pursuant to Section 5.10 and 3.10), (f) contribute $250,000 for neighborhood traffic calming (pursuant to Section 5.13), (g) design and construct interim improvements for the Community Park or provide a $1 million contribution towards development of the final park improvements at the City's election (pursuant to Section 5.9.1), (h) design and construct the temporary dry storage area in the Community Park (if necessary) or rough grade and construct the permanent dry storage area (pursuant to the Project Approvals), (i) dedicate the Linear Park

and Neighborhood Park (each park is anticipated to be transferred upon development of a Block associated with the park), (j) contribute to public art (pursuant to Section 5.15), (k) contribute $100,000 for Casanova Park (pursuant to Section 5.16) and (l) contribute to Fiesta Gardens Homeowners' Association for aquatic improvements to the common areas pursuant to Section 5.17), without City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any failure by Owner to obtain required consent shall be curable in accordance with the provision of Section 8.1 hereof (Events of Default). Following approval of the Design Guidelines and First Phase applications, and except as expressly provided in this Section 10.1, Owner shall have the right, without the consent of City, to assign or transfer all or any portion of its interest, rights or obligations under this Agreement to third Persons acquiring an interest or estate in all or a portion of the Property (the "Transferred Property"), including, but not limited to, purchasers or long term ground lessees of individual lots, Blocks, parcels, or of any of the buildings located within the Property, so long as the Owner provides the City with a certification that to Owner's reasonable knowledge, the Person acquiring the Transferred Property has a demonstrated track record with projects of a similar scope and quality, and the entity or person is capable of qualifying for commercially reasonable financing for the Transferred Property from a regional bank or other substantial financial institution or equity source. Notwithstanding the foregoing, City's consent shall not be required for an assignment of an interest in this Agreement in connection with a conveyance or transfer to an equity source, bank, or other financial institution or corporation for financing purposes of any equitable interest in the Project and/or the Property whether by means of a deed of trust or other instrument.

10.2. Notice. If Owner is not required to obtain City's consent to an assignment or transfer pursuant to Section 10.1, Owner shall give prior written notice to City of

its intention to assign or transfer any of its interest, rights or obligations under this Agreement. Any failure by Owner to provide such notice shall be curable in accordance with the provision of Section 8.1 hereof (Events of Default). For the purposes of this Section 10.2, an assignment includes an assignment of an interest in this Agreement in connection with a conveyance or transfer to a bank or other financial institution or corporation for financing purposes of any equitable interest in the Project and/or the Property whether by means of a deed of trust or other instrument.

10.3. Assignment Agreement. Any assignee or transferee shall expressly assume Owner's obligations under this Agreement through an assignment agreement ("Assignment Agreement") to be executed by and between (a) Owner, (b) the assignee or transferee, and (c) City. Execution of such Assignment Agreement shall thereby relieve Owner of any responsibility or liability for those assumed obligations under this Agreement, and shall impose upon the assignee or transferee those assumed obligations. If Owner or the Owner of any Transferred Property defaults under this Agreement, such default shall not constitute a default by the Owner of any other portion of the Property hereunder (including, but not limited to the Owner) and shall not entitle City to terminate or modify this Agreement with respect to such other portion of the Property or the Owner thereof; provided, however, that nothing herein shall restrict City from taking action with respect to the portion of the Property or the Owner actually responsible for the default.

10.4. Trip Budget. Each Assignment Agreement shall specify the number of PM peak hour trips allocated to the Transferred Property ("Trip Budget") by Owner. The Assignment Agreement may provide for the Trip Budget to be reduced in the future (i) where the actual trips (as determined by monitoring) or the forecast trips (as determined at

SPAR) generated by the Transferred Property are lower than the Trip Budget, and/or (ii) to reflect future reductions required by the Approvals for the Project overall. City agrees that the monitoring and enforcement of the Trip Budget shall be handled through the Approvals and not through this Agreement, and any failure to comply with the Trip Budget shall not constitute an Event of Default or other violation of this Agreement in any way whatsoever.

10.5. Covenants Run With The Land. All of the provisions, agreements, rights, powers. standards, terms, covenants and obligations contained in this Agreement shall constitute covenants that shall run with the land comprising the Property, and the burdens and benefits shall be binding upon and inure to the benefit of each of the Parties and their respective heirs, successors (by merger, consolidation, or otherwise), assigns, devisees, administrators, representatives, and lessees.

11. Amendment and Termination.

11.1. Amendment or Cancellation. Except as provided in Article 6 (Periodic Review of Compliance) above with respect to City's annual review, this Agreement may be canceled, modified or amended only by mutual consent of the Parties in writing, and then only in the manner provided for in Government Code Section 65868 and Section 8 of the Development Agreement Resolution. Minor modifications to this Agreement which do not relate to the Term, permitted uses, density or intensity of use, height or size of buildings, provisions for reservation and dedication of land, conditions, terms, restrictions and requirements relating to subsequent discretionary actions, monetary contributions by Owner, or any conditions or covenants relating to the use of the Property, or like material provisions, shall not be considered amendments and shall require the giving of notice pursuant to Government Code

Section 65867 as specified by Section 65868 thereof, but shall not require a public hearing before the Parties may make such amendment.

11.2. Recordation. Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than ten (10) days after the effective date of the action, and such effective date shall be considered the date upon which the City entered into or determined such amendment, termination or cancellation.

12. Notices.

12.1. Procedure. Any notice to either Party shall be in writing and given by delivering the same to such Party in person or by sending the same by registered or certified mail, or express mail, return receipt requested, with postage prepaid, to the Party's mailing address. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

City:	City of San Mateo 330 West 20th Avenue San Mateo, California 94403 Attention: Director of Community Development
with a copy to:	Office of the City Attorney 330 West 20th Avenue San Mateo, California 94403
Owner:	Bay Meadows Land Company 1200 Park Place San Mateo, California 94403 Attention: Terrence Fancher
with a copy to:	Gibson, Dunn & Crutcher LLP 333 S. Grand Avenue Suite 4900 Los Angeles, California 90071 Attention: Amy R. Forbes

Any 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. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

13. Miscellaneous.

13.1. Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that neither 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 terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Owner, the affairs of City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

13.2. Approvals. Unless otherwise herein provided, whenever approval, consent or satisfaction (herein collectively referred to as a "consent") is required of a Party pursuant to this Agreement, such consent shall not be unreasonably withheld or delayed. Consent shall be deemed given if the Party from whom the consent is sought neither approves or disapproves of the request within thirty (30) days, or such other applicable time period specified in this Agreement, after receipt of the written request for consent, but not before the Party requesting the consent has delivered notice to the opposing Party that the thirty (30) day period has expired, and that it will deem such passage of time to be consent if the opposing Party does not object within ten (10) calendar days. If a Party shall not consent, the reasons therefore shall be stated in reasonable detail in writing. Consent by a Party to or of any act or request by the

other Party shall not be deemed to waive or render unnecessary consent to or of any similar or subsequent acts or requests.

13.3. Project Approvals Independent. All Approvals which may be granted pursuant to this Agreement, and all Approvals or other land use approvals which have been or may be issued or granted by the City with respect to the Property, constitute independent actions and approvals by the City. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if the City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any Approvals or other land use approvals. In such cases, such Approvals will remain in effect pursuant to their own terms, provisions and conditions.

13.4. Not A Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of the Property, or of the Project, or portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever except as specifically provided as a term of this Agreement, condition of Project Approval or other approval. Owner shall have the right to prevent or prohibit the use of the Property, or the Project, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purpose inimical to the operation of a private, integrated Project as contemplated by this Agreement.

13.5. Severability. Invalidation of any of the provisions contained in 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 circumstance 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.

13.6. Exhibits. Exhibits A, B, D and E listed in the Table of Contents and referred to herein are deemed incorporated into this Agreement in their entirety. Exhibit C is not incorporated into this Agreement.

13.7. Entire Agreement. This written Agreement and the Exhibits 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, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement.

13.8. Construction of Agreement. The provisions of this Agreement and the Exhibits shall be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purpose of the Parties. The captions preceding the text of each Article, Section, subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa.

13.9. Further Assurances; Covenant to Sign Documents. Each Party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

13.10. Governing Law. This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the laws of the State of California.

13.11. References; Terminology. Unless otherwise specified, whenever in this Agreement, reference is made to the Table of Contents, any Article or Section, or any defined term, such reference shall be deemed to refer to the Table of Contents, Article, Section or defined term of this Agreement. Exhibits to this Agreement shall be incorporated into this Agreement as if stated fully herein. The use in this Agreement of the words "including", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific items or matters, whether or not language of nonlimitation, such as "without limitation" or "but not limited to", or words of similar import, are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

13.12. Signature Pages. For convenience, the signatures of the Parties to this Agreement may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

13.13. Construction. This Agreement has been reviewed and revised by legal counsel for both Owner and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

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

13.15. Indemnification.

Owner agrees to defend, indemnify, release and hold harmless the City, its City Council members, agents, officers, attorneys, employees, boards and commissions from any litigation, claim, action or court proceeding brought against any of the foregoing individuals or entities ("Indemnified Parties"), the purpose of which is to attack, set aside, void or annul the Project Approvals or this Agreement. This indemnification shall include, but not be limited to, damages, costs, expenses, reasonable attorney fees or expert witness fees that may be asserted or incurred by Indemnified Parties, arising out of or in connection with the approval of this Agreement or any Project Approvals. If Owner is required to defend Indemnified Parties in connection with any litigation, claim, action, or court proceeding, the City shall retain the right to approve any and all settlements proposed by Owner, which approval shall not be unreasonably withheld from the City. Owner shall also have the right to approve any and all settlements of any such matters proposed by the City and relating to this Agreement or the Project Approvals, which approval shall not be unreasonably withheld from the Owner. City agrees to cooperate with Owner in the

defense of the claim, action or proceeding. Nothing in this section shall be construed to mean that Owner shall defend, indemnify or hold the City or its elected or appointed representatives, officers, agents and employees harmless from any claims of personal injury, death or property damage arising from, or alleged to arise from, the maintenance or repair by the City of improvements that have been offered for dedication and accepted by the City or for City's gross negligence or willful misconduct.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

"City"
CITY OF SAN MATEO,
a municipal corporation
of the State of California

Attest:

City Clerk

By

Mayor

Approved as to Form:

By:

City Attorney

"Owner"

BAY MEADOWS LAND COMPANY,
a Delaware corporation

By

Its PRESIDENT

10857225_7.DOC

State of California
County of San Mateo

Subscribed to and sworn before me on this 9th day of January, 2006, by JAN EPSTEIN, personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Norma Gomez, City Clerk in and for the City of San Mateo, County of San Mateo, State of California

ACKNOWLEDGEMENT

State of California
County of San Mateo

On January 11, 2006 before me, Norma Gomez, City Clerk of the City of San Mateo, California, personally appeared Jan Epstein, Mayor, personally known to me (or 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 she executed the same in her authorized capacity, and that by her signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Norma Gomez, City Clerk
In and for the City of San Mateo
County of San Mateo, State of California

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN MATEO)

On November 4, 2005 before me, Maureen E. Riley, a notary public in and for said State, personally appeared Terrence E Fancher, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person~~(s)~~ whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

Maureen E Riley
Signature (Seal)

MAUREEN E. RILEY
Commission # 1467978
Notary Public - California
San Mateo County
My Comm. Expires Feb 3, 2008

LA\1492851.1

EXHIBIT A - Description of Property

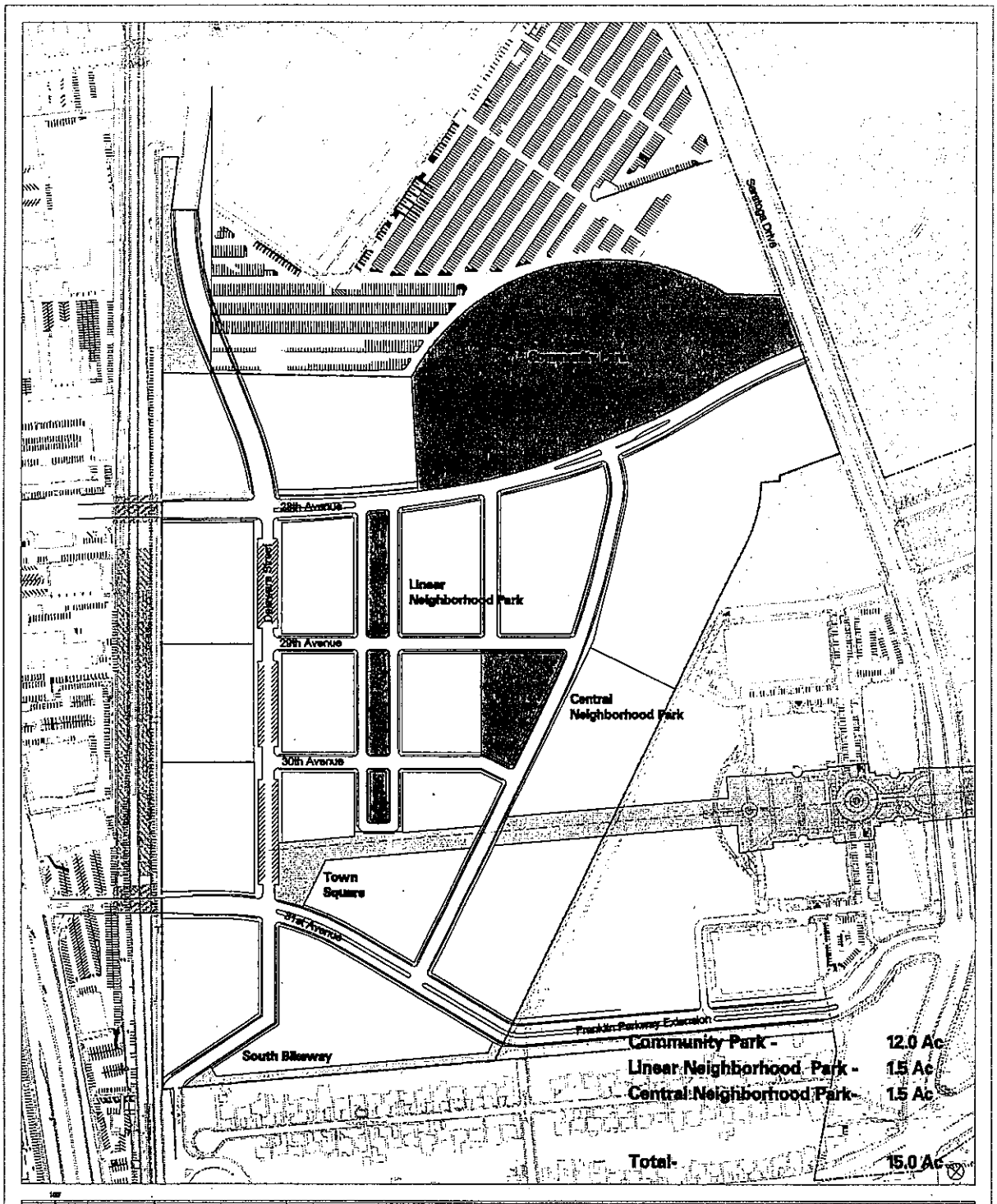
LEGAL DESCRIPTION

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

Parcel 1, as shown on that certain map entitled "Bay Meadows No. 1, City of San Mateo, San Mateo County, California", filed in the Office of the County Recorder of San Mateo County, State of California, on June 8, 1999 in Book 129 of Maps at page (s) 47 through 57, inclusive.

APN: 040-030-090 JPN: 129-047-000-01 T

EXHIBIT B – Map of Property



(2)

First American Title Company

Escrow No.: NCS 457119 SM

2008-084562
02:27pm 07/22/08 AG Fee: NO FEE
Count of pages 7
Recorded in Official Records
County of San Mateo
Warren Slocum
Assessor-County Clerk-Recorder

This document is recorded for the benefit of the City of San Mateo and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code.

When recorded, mail to:

Office of the City Attorney
City of San Mateo
330 West 20th Avenue
San Mateo, California 94403

SPACE ABOVE THIS LINE FOR RECORDER'S USE

7p

MEMORANDUM OF TECHNICAL CORRECTIONS TO THE

BAY MEADOWS PHASE II DEVELOPMENT AGREEMENT

This Memorandum of Technical Corrections to the Bay Meadows Phase II Development Agreement (this "Memorandum") is entered into as of July 21, 2008 (the "Effective Date"), by and among the City of San Mateo, a municipal corporation of the State of California ("City"), Bay Meadows Land Company, a Delaware limited liability company ("BMLC"), and Bay Meadows Main Track Investors, LLC, a Delaware limited liability company ("Owner"), with reference to the following facts, understandings and intentions.

RECITALS:

A. The City and an entity captioned "Bay Meadows Land Company, a Delaware corporation" (hereinafter referred to as "Land Company"), entered into that certain Bay Meadows Phase II Development Agreement, dated November 21, 2005, which was recorded on January 24, 2006 as Instrument No. 2006-011071, in the Official Records of San Mateo County, California (the "Agreement"), encumbering that certain property more particularly described on Exhibit A attached hereto (the "Property"). All initially capitalized terms not defined herein shall have the meanings assigned to them in the Agreement.

B. Owner is, was at the time of execution of the Agreement, and has been at all times since the execution of same, the owner of the Property. BMLC is the sole member of Bay Meadows Main Track Investors, LLC, a Delaware limited liability company, and thus is a beneficial owner of the Property. Terrence E. Fancher, currently is, and at the time of the execution of the Development Agreement was, the President of both BMLC and Owner and the sole manager of the general partner of the manager of both BMLC and Owner.

C. Upon execution of the recorded Agreement, due to clerical error, the owner was inadvertently named as Land Company.

D. At all times since execution of the Agreement, Owner has performed the obligations of the Owner set forth in the Agreement, and the City and Owner have dealt with each other as the correct parties to the Agreement, which is still in full force and effect.

E. Owner, BMLC and the City would like to execute this Memorandum of Technical Correction to correct the clerical error in the name of the owner, and confirm the correct name of the Owner party to the Agreement.

F. At the time of adoption of the Agreement, Paragraph R of the Recitals on page 11 of the Agreement, concerning the date of adoption and the effective date, was left blank, pending actual approval and adoption by the City Council. When the blanks were filled in after-the-fact, the inserted text incorrectly stated that Ordinance 2005-17 "became effective on November 28, 2005." The error was in good faith because Ordinance 2005-17 recited that it would take effect upon publication, which occurred November 28, 2005.

G. However, in accordance with California state law which provides that an ordinance cannot become effective until 30 days after passage, the Agreement did not take effect until December 21, 2005 (thirty (30) days after the adoption of Ordinance 2005-17).

NOW, THEREFORE, in consideration of the promises and conditions contained herein, the parties hereto agree as follows:

1. The correct name of the Owner in the Agreement is, and has been at all times since the inception of the Agreement, as follows: "Bay Meadows Main Track Investors, LLC, a Delaware limited liability company".

2. Each and every reference in the Agreement to Land Company or BMLC as "Owner" shall be replaced with a reference to Bay Meadows Main Track Investors, LLC, a Delaware limited liability company, the sole member of which is Bay Meadows Land Company, a Delaware limited liability company.

3. Notwithstanding the last sentence of Paragraph R of the Recitals on page 11 of the Agreement, which reads "Ordinance No. 2005-17 became effective on November 28, 2005," or any other text to the contrary, Ordinance No. 2005-17 became effective on December 21, 2005.

4. The Agreement is in full force and a binding obligation of the Parties. The Agreement has not been amended or modified either orally or in writing. Neither Owner nor City is in default in the performance of their respective obligations under the Agreement.

5. Owner represents and warrants to City that it is a limited liability company organized under the laws of the State of Delaware and is in good standing thereunder and is qualified to do business in the State of California.

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

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum to be executed as of the day and year first above written.

"OWNER"

BAY MEADOWS MAIN TRACK INVESTORS, LLC, a Delaware limited liability company

By: _____
Name: Terrence E. Fancher
Title: President

"BMLC"

BAY MEADOWS LAND COMPANY, LLC, a Delaware limited liability company

By: _____
Name: Terrence E. Fancher
Title: President

STATE OF ~~CALIFORNIA~~ New York)

COUNTY OF New York)

On July 17, 2008 before me, Bernadette M. Sullivan, a Notary Public, personally appeared Terrence E. Fancher, who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Bernadette M. Sullivan

(Seal)

BERNADETTE M. SULLIVAN
Notary Public, State of New York
No. 01SU4813940
Qualified in New York County
Commission Expires June 30, 2010

STATE OF CALIFORNIA)

COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

Exhibit A

Legal Description

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

Parcel 1, as shown on that certain map entitled "Bay Meadows No. 1, City of San Mateo, San Mateo County, California", filed in the Office of the County Recorder of San Mateo County, State of California, on June 8, 1999 in Book 129 of Maps at page(s) 47 through 57, inclusive.

APN: 040-030-090 JPN: 129-047-000-01 T

ACKNOWLEDGED AND APPROVED BY:

CITY OF SAN MATEO,
a municipal corporation
of the State of California

Attest: _____
City Clerk

By: _____
Mayor

Carole Groom

Approved as to form:

By: _____
City Attorney

100479786_5.DOC

STATE OF CALIFORNIA)

COUNTY OF San Mateo)

On July 18, 2008 before me, Toni L. Di Capua, a Notary Public, personally appeared Carole Groom, who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) ~~is~~/are subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Toni L Di Capua

(Seal)

TONI L. DI CAPUA
Commission # 1779779
Notary Public - California
San Mateo County
My Comm. Expires Dec 9, 2011

STATE OF CALIFORNIA)

COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Gibson, Dunn & Crutcher LLP
333 S. Grand Avenue, Suite 4900
Los Angeles, California 90071
Attention: Amy R. Forbes, Esq.

2012-039872
11:30 am 03/26/12 MT Fee: 39.00
Count of Pages 9
Recorded in Official Records
County of San Mateo
Mark Church
Assessor-County Clerk-Recorder
* R 0 0 0 1 3 7 4 8 9 3 *

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

9

MINOR MODIFICATION TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN MATEO AND BAY MEADOWS MAIN TRACK INVESTORS, LLC

SEPARATE PAGE PURSUANT TO CAL. GOV'T CODE § 27361.6

MINOR MODIFICATION TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN MATEO AND BAY MEADOWS MAIN TRACK INVESTORS, LLC

This MINOR MODIFICATION TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN MATEO AND BAY MEADOWS MAIN TRACK INVESTORS, LLC ("Minor Modification") is dated November 21, 2011, and is by and between the City of San Mateo, a municipal corporation of the State of California ("City"), and Bay Meadows Main Track Investors, LLC, a Delaware limited liability company ("Bay Meadows").

WHEREAS, City and Bay Meadows are parties to that certain Bay Meadows Phase II Development Agreement dated November 21, 2005 and recorded in the Official Records of San Mateo County, California ("Official Records") on January 24, 2006 as Instrument Number 2006-011071, as modified by that certain Memorandum of Technical Corrections to the Bay Meadows Phase II Development Agreement (the "Memorandum of Corrections") dated July 21, 2008 and recorded in the Official Records on July 22, 2008 as Instrument Number 2008-084562 (collectively, the "Development Agreement"); and

WHEREAS, Section 11.1 of the Development Agreement provides that the parties may make minor modifications to the Development Agreement; and

WHEREAS, the City and Bay Meadows wish to (1) make minor modifications to the Development Agreement to revise the provisions relating to proposed interim Community Park improvements, and (2) clarify the specific dates for certain defined terms in the Development Agreement;

NOW, THEREFORE, the parties agree as follows:

1. Section 1.20 of the Development Agreement, "Effective Date," is modified to add the following sentence to the end of that Section: "Notwithstanding anything to the contrary contained herein, the Effective Date is December 21, 2005." This modification is consistent with Paragraph 2 of the Memorandum of Corrections.

2. Section 1.22 of the Development Agreement, "Election to Discontinue Racing," is modified to add the following sentence to the end of that Section: "Notwithstanding anything to the contrary contained herein, the date of the Election to Discontinue Racing is April 1, 2010."

3. Section 1.51 of the Development Agreement, "Term," is modified to add the following sentence to the end of that Section:

"Notwithstanding anything to the contrary contained herein, the term of this Agreement ends on December 20, 2023."

4. Section 5.9.1 of the Development Agreement is hereby deleted in its entirety and replaced with the following:

> "No later than April 1, 2012, Owner shall irrevocably offer to dedicate approximately twelve (12) acres of land adjacent to Saratoga Drive as a community park ("Community Park"). Prior to acceptance of the offer to dedicate the Community Park, Owner may use the site of the Community Park for staging of construction activities. The timing for dedication of the parks shall be as specified in the Project Approvals. Programming for the Community Park shall be determined by the City. However, as additional consideration for this Agreement, the Owner shall design and construct interim improvements to the Community Park consisting of one or more grass turf fields and other improvements in the Community Park so as to provide immediately usable park land for the project. Interim improvements shall be completed substantially as described in the attached Exhibit F to this Agreement (collectively, the "Interim Park Improvements"). City and Owner agree that Owner shall not commence construction of the Interim Park Improvements until the earlier to occur of (1) such time that Owner has consummated the first land sale with respect to any portion of the Property comprising developable area, or (2) the commencement of construction on the first vertical building (the "Park Improvements Trigger Event"). City further agrees that promptly following the Park Improvements Trigger Event, City shall issue all required permits, approvals, consents and agreements that are required for Owner to commence and complete construction of the Interim Park Improvements. Acceptance of the Interim Park Improvements shall be in accordance with Section 5.8 of this Agreement."

5. A new Exhibit F is hereby added to the Development Agreement in the form of Exhibit A attached hereto and incorporated herein by reference.

6. The parties intend hereby to modify the Development Agreement only as set forth in this Minor Modification, and the parties hereby agree that, except as expressly modified hereby, the remaining terms of the Development Agreement are hereby confirmed and remain in full force and effect.

7. This Minor Modification may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original, and all of which shall be deemed to be one and the same

instrument. Electronically transmitted signatures shall be deemed originals.

[SIGNATURES FOLLOW ON NEXT PAGE]

CITY OF SAN MATEO

Susan M. Loftus, City Manager

Date: 3/14/12

ATTEST:

Patrice M. Olds, City Clerk

BAY MEADOWS MAIN TRACK INVESTORS, LLC,
a Delaware limited liability company

KRISTIN RENAUDIN [print name]

Date: 3/19/12

Approved as to Form:

Shawn Mason, City Attorney

STATE OF CALIFORNIA)

COUNTY OF San Mateo)

On March 14, 2012, before me, Patricia M. Olds, City Clerk, a ~~Notary Public~~, personally appeared Susan M. Loftus, who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~, subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity~~(ies)~~, and that by ~~his~~/her/~~their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Patricia M. Olds (Seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California
County of San Francisco

On March 20, 2012 (Date) before me, Renee Adams, Notary Public (Here Insert Name and Title of the Officer),
personally appeared Kristin Renaudin (Name(s) of Signer(s)),

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

RENEE ADAMS
Commission # 1953565
Notary Public - California
San Francisco County
My Comm. Expires Oct 21, 2015

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: Renee Adams (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Minor Modification (Bay Meadows Phase II Dev Agmt)

Document Date: _____ Number of Pages: 8

Signer(s) Other Than Named Above: Susan M. Loftus, Patrice M. Olds

Capacity(ies) Claimed by Signer(s)

Signer's Name: Kristin Renaudin	Signer's Name: _____
☑ Corporate Officer — Title(s): _____	☐ Corporate Officer — Title(s): _____
☐ Individual	☐ Individual
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact	☐ Attorney in Fact
☐ Trustee	☐ Trustee
☐ Guardian or Conservator	☐ Guardian or Conservator
☐ Other: _____	☐ Other: _____
Signer Is Representing: Bay Meadows Main Track	Signer Is Representing: _____
RIGHT THUMBPRINT OF SIGNER — Top of thumb here	RIGHT THUMBPRINT OF SIGNER — Top of thumb here

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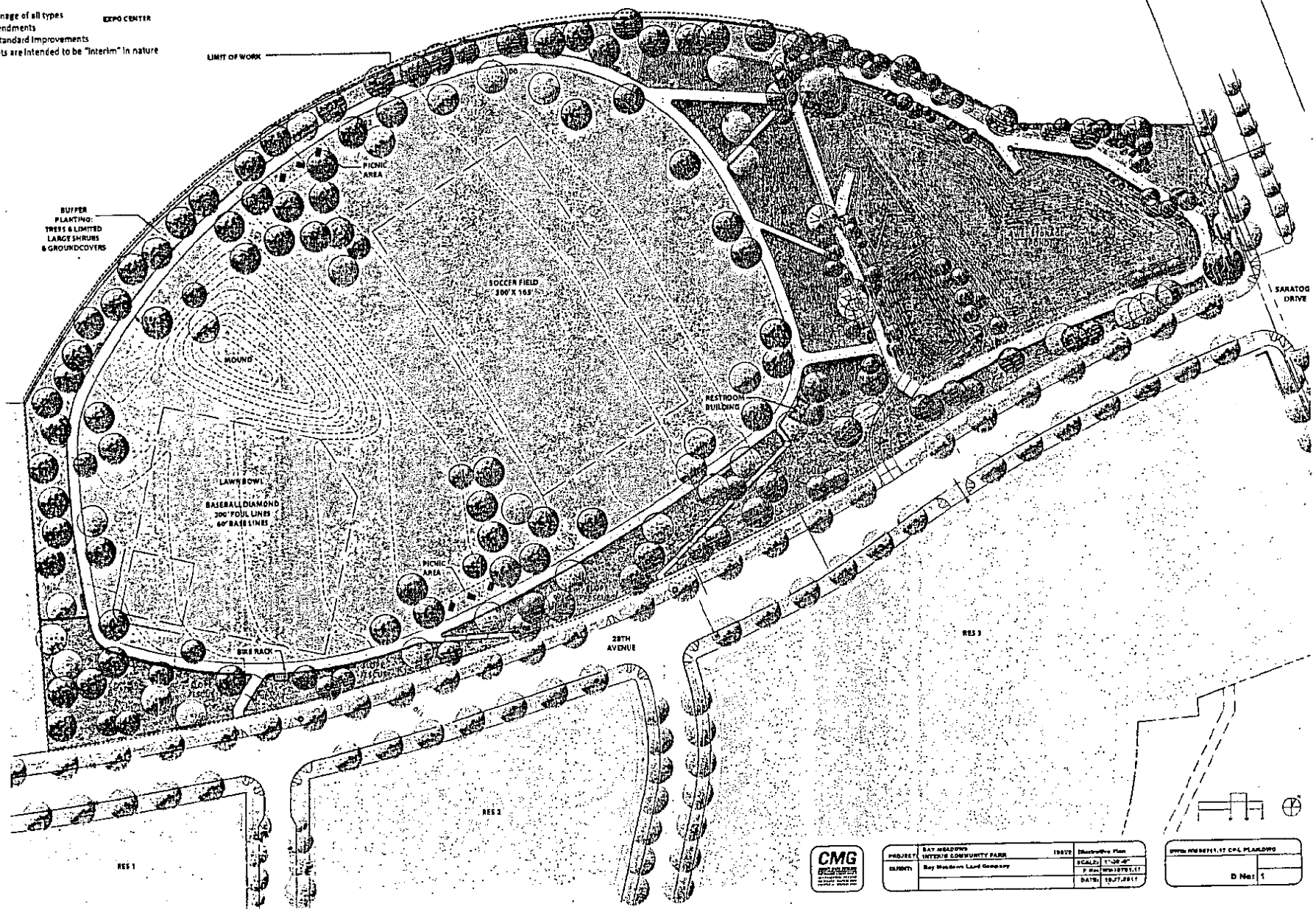
Item #5907

EXHIBIT A TO MINOR MODIFICATION
(EXHIBIT F TO DEVELOPMENT AGREEMENT)

[Attached.]

Exhibit F to the Development Agreement
AND
Exhibit A to the Minor Modification to the Development Agreement

Exclusions:
1) Sub-drainage of all types
2) Soil Amendments
3) Above-standard Improvements

Note: Improvements are intended to be "interim" in nature