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City of Hayward  
777 "B" Street  
Hayward CA 94541-5007



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PATRICK O'CONNELL  
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## DEVELOPMENT AGREEMENT

BETWEEN

**CITY OF HAYWARD (CITY)**

AND

**LA VISTA L.P., A CALIFORNIA LIMITED PARTNERSHIP**

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(Govt. Code 27361.6)

**DEVELOPMENT AGREEMENT**  
**BY AND BETWEEN**  
**LA VISTA L.P., A CALIFORNIA LIMITED**  
**PARTNERSHIP**  
**AND**  
**THE CITY OF HAYWARD**

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**LA VISTA PROJECT DEVELOPMENT AGREEMENT**

THIS AGREEMENT ("Agreement") is entered into this 12 day of <sup>June</sup>~~November~~, 2007<sup>8</sup>, (the "Agreement Date") by and between La Vista L.P., a California limited partnership ("OWNER"), and the CITY OF HAYWARD, a municipal corporation, organized and existing under the Hayward City Charter and laws of the State of California ("CITY").

**RECITALS**

This Agreement is entered into based upon the following facts:

- A. When used in these Recitals, each of the terms defined in Section 1 of this Agreement shall have the meaning given to it therein.
- B. Government Code Sections 65864-65869.5 authorize CITY to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, in order to, among other things: encourage and provide for the development of public facilities in order to support the development of new housing; provide certainty in the approval of development projects in order to avoid the waste of resources and the escalation in the cost of housing and other development to the consumer and encourage investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public; and, to provide assurance to developers (1) that they may proceed with their projects in accordance with existing policies, rules and regulations, subject to their conditions of approval and (2) in order to strengthen the public planning process.
- C. OWNER is the holder of a legal or equitable interest in the Property legally described in Exhibit A, and desires and intends to develop the Property as a limited medium density residential development for the uses and purposes set forth in the Development Plan. The Development of the Property requires substantial early and major capital expenditures and investments with respect to the

construction and installation of major infrastructure and facilities, both on-site and off-site, including, without limitation, a neighborhood park and detention basin, a contribution to the community center/additional park area, road improvements, a water tank and a contribution to off-site affordable housing (the "Project"), to serve the residents and others using the Property as anticipated by the General Plan, the Development Approval(s) listed on Exhibit B and this Agreement.

D. CITY has determined that the Development Plan implements the goals and policies of CITY's General Plan (as referenced in Government Code Sections 65450 et seq.) applicable to the Project and provides appropriate land uses and imposes appropriate standards and requirements with respect to land development and usage so as to maintain the overall quality of life and of the environment within CITY.

E. Pursuant to Government Code Section 65865, CITY has adopted the CITY Development Agreement Ordinance, establishing procedures and requirements for the consideration of proposed development agreements.

F. OWNER has applied for, and CITY has adopted certain development approvals listed on Exhibit C, including amendments to the General Plan pursuant to OWNER's applications for General Plan Amendment No. PL-2005-0157, a change of zoning pursuant to Zone Change No. PL-2005-0158 and associated Preliminary Development Plan, and approval of a Vesting Tentative Tract Map (7620) (hereafter "the Current Development Approvals"). Specifically, the Project includes: 1) amendments to the City of Hayward's General Plan Land Use designations to *Limited Medium Density Residential* for the residential portion of the site, to *Parks and Recreation* for the neighborhood park and community center/additional park sites, with the remainder of the site proposed to remain *Limited Open Space* and 2) amendments to zoning/prezoning designations, to a *Planned Development District (PD)* for the residential area of the property and eastern hillside and to *Open Space/Parks and Recreation (OS)* for the neighborhood park and community/additional park center areas, with the remainder of the site to

remain as *Agriculture (AB10A)*. This Development Agreement will protect the interests of CITY's existing and anticipated citizens and the quality of their community and environment through the planned development process. As part of the process of approving the Development Plan authorized by the Current Development Approvals, CITY has analyzed the environmental effects of this Project, adopted a Mitigated Negative Declaration on July 19, 2005, and made the necessary findings required by the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") pursuant to Resolution No. 05-097, and adopted a mitigation monitoring plan pursuant to Resolution No. 05-097.

G. The CITY's staff has reviewed this Agreement and deemed it to be complete and prepared a report to the Planning Commission pursuant to CITY Municipal Code Section 10-9.05 regarding this Agreement's consistency with the CITY's General Plan. The Planning Commission has made a recommendation containing the necessary findings set forth in the CITY Municipal Code Section 10-9.08 which recommends that the City Council authorize execution of a Development Agreement. The City Council has held a public hearing, and found and determined that this Agreement: (i) is consistent with CITY's General Plan, as amended; (ii) is in the best interests of the health, safety and general welfare of CITY, its residents and the public; (iii) is entered into pursuant to and constitutes a present exercise of the police power by CITY; and (iv) is entered into pursuant to and complies with the requirements of Section 65867 of the Development Agreement Legislation and the CITY Development Agreement Ordinance.

H. CITY adopted Ordinance No. 05-06 on July 26, 2005, approving this Agreement and its execution in accordance with the provisions of the Development Agreement Legislation and CITY's Development Agreement Ordinance.

I. Based on the foregoing, OWNER and CITY desire to enter into this Agreement.

## AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals of fact, the mutual covenants contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

### 1. SECTIONS; DEFINITIONS AND EXHIBITS.

1.1 Sections and Paragraphs. Any reference in this Agreement to a "Section" is a reference to the indicated numbered section or sub-section of this Agreement and a reference to a "Paragraph" is a reference to the indicated paragraph of a Section.

1.2 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.2.1 "Affordable Housing" means the affordable housing to be provided offsite, along with the associated plan, which is a part of the Development Approvals and is more fully described in Exhibit D. Approval of the Affordable Housing shall be in accordance with the City's Inclusionary Housing Ordinance.

1.2.2 "Building and Improvement Standards" means Regulations of CITY which are of general application which establish regulations and standards for the building, construction and installation of structures and associated improvements such as and including, without limitation, CITY's building, plumbing, mechanical, grading, swimming pool, sign and fire regulations.

1.2.3 "CITY" means the City of Hayward, a charter city located within the County of Alameda, State of California.

1.2.4 "CITY Development Agreement Ordinance" means Ordinance 84-015 C.S. (CITY Municipal Code Sections 10-9.01 through 10-9.15) which was adopted on July 10, 1984,

establishing a procedure for the consideration and approval of development agreements pursuant to the Development Agreement Legislation.

1.2.5 “Current Development Approvals” means those certain Development Approvals in effect on the Effective Date with respect to the Property, specifically the General Plan Amendment No. PL-2005-0157, Zone Change No. PL-2005-0158 which authorizes classification of the residential portion of the Property to a Planned Development District and related approval of the associated Preliminary Development Plan, and which amends the Mission-Garin Area Special Design District (SD-5) provisions, Vesting Tentative Tract Map (7620) and the abandonment of a portion of the Alquire Parkway right-of-way, as listed in Exhibit C.

1.2.6 “Development” means the improvement of the Property for purposes of building the structures, improvements and facilities comprising the Project including, without limitation: grading, the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of structures and buildings, the dedication of open space, the dedication of land for the Affordable Housing, the dedication of land and construction of the community park and detention basins; the dedication of land for the Community Center or dedication of land and construction of the Additional Park area; the installation of landscaping; and the payment of certain monies related to the Community Center/Additional Park and the Affordable Housing; but not including the maintenance, repair, reconstruction or redevelopment of any structures, improvements or facilities after the construction and completion thereof, ~~except~~ as otherwise specifically provided herein.

1.2.7 “Development Agreement Legislation” means Sections 65864 through 65869.5 of the California Government Code as it exists on the Effective Date.

1.2.8 “Development Approval(s)” as listed in Exhibit B, means site specific plans, maps, permits and other entitlements to use of every kind and nature approved or granted by CITY in connection with the Development of the Property, including but not limited to: general plan

amendments, zone changes, including amendments to the Mission-Garin Area Special Design District provisions, preliminary and precise development plans, vesting tentative and final subdivision tract maps and related agreements, abandonment of a portion of the Alquire Parkway right-of-way, development and building permits for residences, the Community Park with Detention Basin (with improvements), the Community Center or Additional Park area (with improvements), the Affordable Housing, road improvements, water tank and related water system upgrades, recreational amenities, development allotments, and grading, building and other similar permits.

1.2.9 “Development Plan” means the development authorized by the Current Development Approvals listed in Exhibit C, including, without limitation, Resolution Nos. 05-098; and Ordinance Nos. 05-05 and 05-04, approving the preliminary development plan for and authorizing the reclassification of the residential area of the Property to a Planned Development District (“PD”), as requested by Zone Change Application No. PL-2005-0158, including approving amendments to the Mission Garin Area Special Design District (SD-5) provisions related to maximum total dwelling unit potential, and approving an amendment to the General Plan Land Use Map to change the residential density classification on the residential area to Limited Medium Density Residential.

1.2.10 “Effective Date” means the date which annexation of the property into the City of Hayward is executed and becomes effective.

1.2.11 “Existing Land Use Ordinances” means those certain Land Use Ordinances in effect on the Effective Date.

1.2.12 “Existing Land Use Regulations” means those certain Land Use Regulations in effect on the Effective Date, including but not limited to Existing Land Use Ordinances and Current Development Approvals.

1.2.13 “General Plan” means the Hayward General Plan adopted by the CITY, as amended by Resolution No. 05-097.

1.2.14 “Governing Policies” means (i) the policies specified in Section 4.1; and (ii) Existing Land Use Ordinances but not including Development Approvals.

1.2.15 “Land Use Ordinances” means the ordinances adopted or to be adopted by CITY which govern permitted uses of land, density and intensity of use and the design, improvement, and construction standards and specifications applicable to the Development of the Property, including, but not limited to, Ordinance No.05-05, adopted on July 26, 2005; zoning ordinances and zoning reclassifications, development moratoria, ordinances implementing growth management and phased development programs, ordinances establishing development exactions, subdivision and park codes and any other similar or related codes and Building and Improvement Standards.

1.2.16 “Land Use Regulations” means Regulations of CITY governing the permitted uses of land, density and intensity of use, including but not limited to adoption or amendment of CITY’s General Plan and Mission Garin Area Special Design District (SD-5) provisions, and the design, improvement and construction standards and specifications applicable to the Development of the Property. Land Use Regulations include, but are not limited to, Land Use Ordinances and Development Approvals. The term Land Use Regulations does not include, however, regulations relating to the conduct of business, professions and occupations generally; taxes and assessments; regulations for the control and abatement of nuisances; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; and, any exercise of the power of eminent domain.

1.2.17 “OWNER” means La Vista L.P., a California limited partnership.

1.2.18 “OWNER’s Obligations” means the obligations of OWNER to pay the sums, build and construct the improvements, dedicate the lands and improvements and undertake and perform the other actions described in Section 3.

1.2.19 “Project” means all phases of the development project contemplated by the Development Plan with respect to the Property, including but not limited to on-site and off-site improvements, as such development project is further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.2.20 “Property” means those certain lands as to which OWNER had a legal or equitable interest on the Effective Date, as legally described in Exhibit A.

1.2.21 “Public Facilities” means those certain lands and facilities to be improved, constructed and dedicated or conveyed to the public pursuant to Section 3.1, as referenced in the Conditions of Approval, listed on Exhibit E.

1.2.22 “Recreational Facilities” means the recreational facilities associated with the Development Approvals consisting of a community park with stormwater detention basins (approximately 30 acres), with an alternative for a community center, and related park improvements, open space and trails within such areas.

1.2.23 “Regulations” means laws, statutes, ordinances, and codes (including the Building and Improvement Standards), resolutions, rules, regulations and orders; approvals, denials and conditional approvals in connection with vesting tentative and final subdivision tract maps, parcel maps, conditional use permits, variances and other permits of every kind and character; programs; and official policies and actions of CITY together with amendments to all of the foregoing.

1.2.24 “Reservations of Authority” means that the Agreement shall not prevent the CITY, in subsequent actions applicable to the Project, from applying new rules, regulations, and

policies applicable to the Property as set forth herein in Section 4 and allowed by applicable law, nor prevent the CITY from denying or conditionally approving any subsequent application on the basis of Existing Land Use Regulations.

1.2.25 "Schedule for Phasing and Construction" means:

Receive Current Development Approvals:	July 2005
Approval of Improvement Plans, Grading Plans and Final Maps	May 2006
Start Reclamation	May 2006
Start Subdivision and Recreational Facilities Improvements	May 2007
Start Homes	October 2007

The Developer has reserved its right to file multiple final maps on the lands shown on the Vesting Tentative Tract Map. It is currently anticipated that there will be a single phase of development and construction. Nothing prohibits earlier starts to schedule items as shown above, subject to normally-required approvals being granted.

1.2.26 "Quarry Entitlements" means the rights, privileges and obligations granted pursuant to Alameda County Surface Mining Permit SMP-37.

1.3 Exhibits. The reference to a specified "Exhibit" in this Agreement is a reference to a certain one of the exhibits listed below, as determined by the accompanying letter designation, which exhibits are attached hereto and by this reference made a part hereof.

<u>Exhibit Designation</u>	<u>Description</u>
A	Legal Description of La Vista Project Site
B	List of all Development Approvals
C	List of Current Development Approvals

D	Description of Affordable Housing
E	Conditions of Approval

## 2. MUTUAL BENEFITS AND ASSURANCES.

2.1 Purposes of Agreement. This Agreement is entered into for the purpose of carrying out the Development Plan for the Project in a manner that will ensure certain anticipated benefits to both CITY (including, without limitation, the existing and future residents of CITY) and OWNER as described in the RECITALS, and to provide to OWNER assurances regarding the Regulations that will be applicable to the Development of the Property, including but not limited to those relating to timing, density and intensity of development, that will justify the undertakings and commitments of OWNER described above and the substantial and early investment in major on-site and off-site infrastructure needed for the Project.

2.2 Undertakings and Assurances Contemplated and Promoted by Development Agreement Legislation. The mutual undertakings and assurances described above and provided for in this Agreement are for the benefit of CITY and OWNER and promote the comprehensive planning, private and public cooperation and participation in the provision of public facilities, the effective and efficient development of infrastructure and facilities supporting development and the mitigation of the impacts of development on the community which was contemplated and promoted by the Development Agreement Legislation.

2.3 Bargained For; Reliance by Parties. The assurances provided to OWNER in Section 4 are provided pursuant to and as contemplated by the Development Agreement Legislation and are bargained and in consideration for the undertakings of OWNER set forth in Section 3 of this Agreement.

## 3. OWNER'S OBLIGATIONS; PROVISION OF PUBLIC BENEFITS.

### 3.1 In General; Public Benefits.

(a) Public Benefits. It is acknowledged that a primary purpose of this Agreement is to provide for the coordinated completion of the Affordable Housing described in Exhibit

D, the Recreational Facilities and the Public Facilities referenced in Exhibit E which will better serve the Development of the Property, as well as contributions and dedications which aid in offsetting the impacts of the Project on the community at large, and provide substantial public benefits, which are referenced in Exhibit E. Accordingly, OWNER shall promptly (to the extent that a time for performance is specified herein or in an Implementation Agreement executed pursuant to Section 3.2) and fully perform OWNER's Obligations as set forth in and subject to the terms and conditions of Exhibit E, including, but not limited to, the dedication of land, the construction of site improvements and the contribution of funds for the Affordable Housing, the construction and dedication or conveyance of the Public Facilities, and the dedication of land, the construction of site improvements and the contribution of funds for the Recreational Facilities.

(b) Existing Conditions and Undertakings. OWNER shall continue to be obligated to, and shall, perform all of the duties and obligations provided for or required by any provisions of the General Plan, the Development Plan, the Current Development Approvals, and the conditions contained in Exhibit E in connection with the Development of the Property. OWNER shall have no obligation under this Agreement to proceed with development of the Project, if it decides, in its sole discretion, that it is unable or unwilling to construct the Project. If OWNER fails to complete any Project phase or Development Approval requirement, CITY may after providing OWNER with notice and opportunity to cure, and an opportunity for a public hearing, modify or cancel the Development Approvals. CITY may also terminate this Agreement pursuant to Section 10.1 if OWNER fails to construct the Project in accordance with the Development Approvals.

3.2 Dedication, Construction and Conveyance of Public Facilities. The Public Facilities to be dedicated (in the case of lands) and/or constructed by OWNER and dedicated or conveyed to CITY as referenced in Exhibit E, shall be completed in accordance with the provisions of Exhibit E and designs, specifications and standards promulgated by CITY in accordance with the Existing Land Use Regulations and Precise Development Plan and dedicated and conveyed to CITY in fee, free of all liens and

encumbrances of every kind and nature except as expressly set forth in Exhibit E or agreed in writing by CITY. In order to effectuate the purposes of this Agreement, OWNER and CITY may enter into one or more agreements (hereinafter jointly "Implementation Agreement(s)") prior to the filing and recording of each Final Map necessary for the Property. Such Implementation Agreement(s) may take the form of a Subdivision Improvement Agreement. Each Subdivision Improvement Agreement shall provide the specific terms and set forth standards and deadlines for the construction and completion of the Public Facilities and their conveyance to CITY as provided for in this Agreement, and construction of privately owned infrastructure and common facilities necessary for the subdivision or phase described in the Vesting Tentative Map and Precise Development Plan approval.

3.3 Relationship of Parties. In performing OWNER's obligations, OWNER is acting under this Agreement as an independent contractor and is not acting as the agent or employee of CITY nor shall anything in this Agreement be construed as creating between OWNER and CITY a partnership or joint venture for any purpose.

3.4 Public Works. If OWNER is required by this Agreement to finance and either design or construct any public works facilities which will be dedicated or conveyed to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in accordance with CITY specifications.

3.5 Obligations Regarding Public Facilities. In any instance where OWNER is required to construct any Public Facilities on lands within City not owned by OWNER, OWNER agrees to use its best efforts to acquire any rights-of-way, easements, or other property rights or interests within City which CITY reasonably determines to be necessary for such Public Facilities. In the event that OWNER is unable to acquire any such property right or interest and it becomes necessary for CITY to utilize eminent domain to acquire any real property rights or interests necessary for the construction of such Public Facilities, OWNER shall be obligated to pay for the costs of acquiring such rights or interests,

including but not limited to relocation costs, costs of suit and attorney's fees. In any instance where OWNER is required to pay for a portion of the costs of construction of Public Facilities on lands outside of City, OWNER shall be required to contribute its share of the reasonable costs of construction and acquisition either prior to the commencement of construction or acquisition of any rights-of-way, easements or interests reasonably required to construct such Public Facilities.

3.6 Effect on Project Schedule. In any instance where CITY is responsible for constructing any Public Facilities for which OWNER is required to pay for all or a portion of the costs of such construction and any related land acquisition, OWNER shall cooperate with the CITY and CITY shall use its best efforts to construct any such Public Facility to achieve the timing goals of the phasing plan approved by CITY or timing of build out and occupancy of the Project. The CITY's inability to complete construction of any Public Facility necessary for the Property due to circumstances beyond the CITY's control shall not constitute a default of this Agreement.

3.7 Benefit Assessment District/Reimbursement Agreement. Upon OWNER's request and payment of CITY's processing charges, the CITY shall initiate proceedings to establish a benefit assessment district or a reimbursement agreement to the extent that the off site system improvements constructed or financed by OWNER pursuant to Exhibit E benefit other properties which are hereafter developed, and OWNER has not been reimbursed for such costs.

#### 4. REGULATIONS GOVERNING THE DEVELOPMENT OF THE PROPERTY AND OTHER CITY OBLIGATIONS.

4.1 Governing Policies. The following policies set forth in this Section.4.1 are consistent with and are provided for in or contemplated by the Existing Land Use Regulations, including the General Plan and the Development Plan.

(a) Permitted Uses. The uses permitted hereunder in accordance with the Existing Land Use Regulations, including but not limited to the following: residential, public and

community facilities, recreational facilities, open space and other public and private recreation facilities, as more specifically described in and subject to the limitations of the Development Plan.

(b) Number of Dwelling Units, Density and Intensity. The maximum total number, density and intensity of residential units permitted hereunder in accordance with the Existing Land Use Regulations, are as set forth in the Development Plan.

(c) Maximum Height and Size of Buildings. The maximum height and size of the Project buildings within the Property are as permitted in accordance with the Development Plan.

(d) Reservations and Dedications of Lands for Public Purposes and Undertaking to Participate in Completion of Major Public Facilities. As provided in Section 3 and more specifically detailed in Exhibit E, OWNER has undertaken to dedicate certain lands and construct and convey to the public the Public Facilities; to dedicate land for, to construct site improvements for, and to contribute certain funds for the Recreational Facilities; and to dedicate land for, to construct site improvements for, and to contribute certain funds for the Affordable Housing; and to provide certain public benefits. In addition, the Existing Land Use Regulations and Current Development Approvals require OWNER to provide and undertake certain other public benefits and facilities.

(e) Moratoria, Phasing of Development. The parties acknowledge and agree that the Governing Policies contemplate and provide for the phasing of the Development of the Property and that except as expressly provided in this Section 4, no subsequent CITY imposed moratorium, ordinance, resolution, or other land use regulation or limitation on the conditioning, rate, timing or sequencing of the Development of the Property or any portion thereof shall apply to or govern the Development of the Property during the term hereof whether affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy permits or other entitlements to use issued or granted by CITY. In the event of any such subsequent action by CITY, OWNER shall continue to be entitled to apply for and receive Development Approvals in accordance with the Existing Land Use Regulations and

Ordinances, and to otherwise develop the Property subject only to the exercise of the reservation of Authority set forth in Section 4.3, the limitations described in Section 4.4 and the terms of this Agreement.

4.2 Regulation of Development.

(a) In General. Notwithstanding any future action of CITY, whether by ordinance, resolution, initiative or otherwise, the CITY Land Use Regulations applicable to and governing the Development of the Property during the term hereof shall be the Existing Land Use Regulations except and subject to the Reservations of Authority and the terms of this Agreement.

(b) Vested Rights. In developing the Property, OWNER is provided and assured the vested right to require that the Land Use Regulations of CITY applicable to and governing the Development of the Property during the term hereof shall be as provided in this Section 4.2.

4.3 Limitations. Reservations and Exceptions. Notwithstanding anything to the contrary set forth in Section 4.2 herein above, in addition to the Existing Land Use Regulations, only the following Land Use Regulations adopted by CITY hereafter shall apply to and govern the Development of the Property ("Reservations of Authority"):

(a) Future Regulations. Future CITY Land Use Regulations which are not in conflict with the Governing Policies or which are in conflict with the Governing Policies and the application of which to the Development of the Property has been consented to in writing by OWNER;

(b) State and Federal Laws and Regulations. Existing and future State and federal laws and regulations, together with any CITY regulations, programs and actions, or inaction, which are reasonably (taking into consideration, among other things, the assurances provided to OWNER hereunder) adopted or undertaken by CITY in order to comply with mandatory state and federal laws and regulations; provided, that in the event that State or federal laws and regulations prevent or preclude

compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such State and federal laws and regulations, in which event this Agreement shall remain in full force and effect to the extent that it is not inconsistent with such laws and regulations and that performance of the remaining provisions would not be inconsistent with the intent and purposes of this Agreement;

(c) Public Health and Safety. Land Use Regulations which are adopted by CITY, which may be in conflict with the Governing Policies which are reasonably required in order to prevent a condition dangerous to the health or safety of the residents of the Project or adjoining properties;

(d) Building and Improvement Standards. Present and future Building and Improvement Standards, except that (taking into consideration the assurances to OWNER in Section 4) any future amendment thereto which reduces the amount of land within the Property which can be utilized for structures and improvements or increases the amount of open space within the Project under the Development Plan shall not be considered a provision of any of the Building and Improvement Standards included within the exception provided by this Paragraph 4.3(d) and shall not apply to and govern the Development of the Project unless it complies with another exception under this Section 4.3 (such as, for example, Paragraph 4.3 (c));

(e) Processing Fees and Charges. Legally allowed processing fees and charges of every kind and nature imposed or required by CITY under current or future Regulations covering the actual costs of CITY in (i) processing applications and requests for permits, approvals and other actions and (ii) monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of OWNER hereunder; and

(f) Taxes, Fees and Assessments. CITY may impose taxes, assessments and fees, as allowed by the Existing Land Use Ordinances and the Existing Land Use Regulations, necessary to implement the Project, as detailed in Exhibit E. The amount of any fees, taxes and assessments applicable to the Project may be reasonably increased over time so long as the increase is applied consistently to all comparable land or projects subject thereto.

4.4 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of CITY possess authority to regulate aspects of the Development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies.

4.5 CITY Cooperation. CITY will cooperate with OWNER and take such additional actions as may be reasonably requested by OWNER to implement this Agreement, including but not limited to, formation of a Geologic Hazard Abatement District ("GHAD") necessary to maintain and, if necessary, repair the lands within Parcel A as shown on the Vesting Tentative Tract Map, formation of a special benefit assessment district(s) for the financing of the construction, improvement, or acquisition of public infrastructure, facilities, lands to benefit the Project, its residents and the CITY in general; provided, however, any such action shall be subject to CITY's Reservations of Authority. In performing any and all of its obligations under this Agreement CITY shall do so in a timely manner and CITY's failure to carry out any of its obligation under this Agreement in a timely manner shall relieve OWNER from compliance with any reasonably related requirement or obligation under this Agreement.

4.6 Sewer and Water Capacity. OWNER shall design, construct and fund, or contribute 100% to the cost of constructing the water system improvements, pursuant to Exhibit E requirements. For those off-site water system improvements which the OWNER is obligated to design and fund, and CITY is obligated to construct, CITY shall use its best efforts to complete such improvements in an expeditious and timely manner to enable timely issuance of Project building permits and certificates of occupancy.

Any failure by CITY to construct or complete any such Public Facility necessary for operation of the Project, or any phase thereof that makes it impossible for OWNER to comply with the Development Approvals or with this Agreement, or to construct the Project in accordance with the phasing plan approved by CITY, shall not constitute a breach or default under this Agreement. CITY acknowledges that, with the water and sewer improvements to be implemented by OWNER, there is adequate water and sewer capacity to serve the Project.

4.7 Acceptance of Dedications. CITY shall accept in a timely manner all dedications and conveyances of Public Facilities from OWNER.

4.8 Credit and Reimbursement Generally. At the time of each final map approval for any portion of the Project, CITY shall reimburse OWNER, to the extent that CITY has received contributions defraying the cost of such improvements from other benefited property owners, or consider establishment of a benefit assessment district or reimbursement agreement, or grant a credit for, all funds expended, costs incurred or improvements made by OWNER pursuant to OWNER'S obligations as set forth in Exhibit E to the extent that OWNER's contributions or improvements directly benefit other development.

4.9 Credit for Infrastructure. City agrees to condition approval of any project that would rely on Owner-funded Public Facilities improvements upon payment on a per-unit basis of the fair share of the cost of such Public Facilities improvements. At least three such projects (identified below) can be particularly identified as of the date of this Agreement, although the City's obligation under this section would apply equally to any such projects identified in the future. If other development that will rely on infrastructure precedes the Project, credits shall be made against the Development Fees at the time they are paid. If other development to rely on Project infrastructure succeeds Project, Owner shall be reimbursed by the City in an amount equal to the required credits.

4.9.1 Ersted Parcel. (Assessor's Parcel Number 078C-0461-001-13)

4.9.2 Smith Parcel. (Assessor's Parcel Numbers 083-0125-001-17 (formerly 083-0125-001-12))

4.9.3 Zaballos Parcel U (Clearbrook Partnership) (Assessor's Parcel Number 083-0254-002-03)

## 5. PERIODIC REVIEWS.

5.1 Annual Review. CITY and OWNER shall review the performance of this Agreement, and the Development of the Project, at least once every twelve (12) month period from the Effective Date. The CITY's reasonable costs of monitoring this Agreement shall be paid by OWNER. As part of such annual monitoring review, within thirty (30) days after each anniversary of this Agreement, OWNER shall deliver to CITY:

(a) a then current build-out phasing plan for the Project; and

(b) all information reasonably requested by CITY (i) regarding OWNER's performance under this Agreement demonstrating that OWNER has complied in good faith with terms of this Agreement and (ii) as required by the Existing Land Use Regulations.

If as a result of such periodic review, CITY finds and determines, on the basis of substantial evidence, that OWNER has not complied in good faith with any of the terms or conditions of this Agreement, CITY may terminate this Agreement as provided in Section 10.2.

## 6. TRANSFERS AND ASSIGNMENTS.

### 6.1 Transfers and Assignments of Rights and Interests.

(a) General. Neither party shall assign or transfer any of its interests, rights or obligations under this Agreement to another without the written consent of the other, which consent shall not be unreasonably withheld. The CITY shall promptly consent to the assignment if the CITY

determines that all of the following requirements are met: (1) the OWNER shall not be in default of this Agreement, (2) the purchaser or assignee shall be willing and capable of complying with the terms and conditions of this Agreement and shall have agreed to comply with this Agreement, and (3) the purchaser or assignee shall execute any document reasonably requested by the CITY with respect to the assumption of the OWNER's obligations under this Agreement. In the event OWNER assigns, or transfers its interest in the Project, OWNER shall ensure that any such assignment or transfer includes an assignment or transfer of OWNER's obligations under this Agreement. OWNER shall also provide CITY with sufficient documentation of such assignment or transfer of OWNER's duties and obligations. The term "assignment" as used in this Agreement shall include successors-in-interest to the CITY or OWNER that may be created by operation of law. Notwithstanding the foregoing, CITY shall have the right to sell, assign or transfer to another public agency CITY's interest in any property dedicated or transferred to CITY pursuant to the terms of this Agreement.

Any attempt to assign or transfer any right or interest in this Agreement except in strict compliance with this Section 6, shall be null and void and of no force and effect.

(b) Subject to Terms of Agreement. Following any such assignment or transfer of any of the rights and interests of OWNER under this Agreement, the exercise, use and enjoyment shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were OWNER

(c) Release of OWNER. Notwithstanding the assignment or transfer of portions or all of the Property or rights or interests under this Agreement, OWNER shall continue to be obligated under this Agreement unless released or partially released by CITY with respect to OWNER's Obligations and the other duties and obligations of OWNER under this Agreement, pursuant to this Section 6.1.(c), which release or partial release shall be provided by CITY upon the full satisfaction by OWNER of the following conditions:

- (i) OWNER is not then in default under this Agreement;
- (ii) OWNER has obtained the consent of CITY to the assignment as provided in Section 6.1.(a); and
- (iii) Such assignee or transferee has assumed such duties and obligations as to which OWNER is requesting to be released and such assignee or transferee has provided CITY with security and other assurances equivalent to that which were provided by OWNER assuring CITY that OWNER's Obligations and the other duties and obligations of OWNER under this Agreement for which OWNER is being released will be fully and strictly performed as provided in this Agreement.

7. TERM OF AGREEMENT.

7.1 Stated Term. This Agreement shall become effective on the Effective Date and unless earlier terminated pursuant to the provisions of this Agreement shall continue in effect for (10) years after annexation of the Property into the City. Notwithstanding the foregoing, in the event that the parties determine that a longer period is necessary to achieve the foregoing purposes, the term of the Agreement may be extended an additional five (5) years by the further written agreement of the City Council and La Vista, L.P. in accordance with Section 8.

7.2 Rights and Duties Following Termination or Expiration. Upon the termination or expiration of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligations to have been performed prior to said termination or which survive such termination pursuant to the Current Development Approvals, Implementation Agreement(s) or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to said termination.

8. AMENDMENT.

8.1 Amendment. Except as otherwise specifically provided in this Agreement, this Agreement may be amended or canceled only by the mutual agreement of the parties in accordance with Government Code Section 65868 and CITY Development Agreement Ordinance, in a writing executed by the parties and recorded in the official records of the County of Alameda.

8.2 Amendment of Development Plan. Except as otherwise expressly provided, the Project shall proceed in accordance with the Development Plan, conditions of approval (Exhibit E) approved by CITY on July 19, 2005, which may be amended or modified by the City Council. Additionally, the Development Plan and conditions may be amended or modified in the following manner:

(a) The Planning Director may administratively amend or modify the Development Plan if the Director determines that the requested amendment or modification is substantially consistent with this Agreement.

(b) Except as provided herein, amendment or modification of the Development Plan shall comply with the procedural provisions of the CITY's Land Use Ordinances and Regulations in effect on the date of application for such amendment or modification.

## 9. PROCESSING OF REQUESTS AND APPLICATION; OTHER GOVERNMENT PERMITS.

9.1 Processing. Upon satisfactory completion by OWNER of all required preliminary actions, meetings, submittal of required information and payment of appropriate processing fees, if any, OWNER and CITY shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the development by OWNER of the Project in accordance with the Development Approvals, including but not limited to the following: processing and checking of all applications, maps, site plans, development plans, land use plans, grading plans, building plans and specifications and environmental assessments and reports and holding all required public hearings for permits, entitlements or approvals relating to the development of the Project, including, but not limited to,

all site plan approvals, final development plans, parcel maps, subdivision maps, subdivision improvement agreements, grading permits, building permits, lot line adjustments, encroachment permits and related matters as necessary for the completion of the development of all lots and parcels comprising the Project site. In this regard, OWNER, in a timely manner, will provide CITY with all documents, applications, plans and other information necessary for the CITY to carry out its obligations hereunder and will cause OWNER's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefore. It is the express intent of this Agreement that the parties cooperate and diligently work to implement any zoning or other land use, site plan, subdivision, grading, building or other approvals for development of the Project in accordance with the Development Approvals, and both OWNER and CITY each shall use their best efforts to effectuate the purposes of this Agreement.

9.2 Other Governmental Permits. In addition, OWNER shall apply in a timely manner 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. CITY shall cooperate with OWNER in its endeavors to obtain such permits and approvals. Notwithstanding the foregoing, CITY shall apply for and obtain such permits and approvals as may be required from CalTrans or other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the construction of the Tennyson Road extension. OWNER shall cooperate with CITY in its endeavors to obtain such permits and approvals.

## 10. DEFAULT AND REMEDIES.

10.1 Termination of Agreement for Default of Owner. CITY in its reasonable discretion may terminate this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under, or to comply in good faith with the material terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed

to take such actions and cure such default within ninety (90) days after the effective date of such notice or, in the event that such default cannot be cured within such ninety (90), day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such ninety (90) day period and to diligently proceed to complete such actions and cure such default.

10.2 Termination of Agreement for Default of CITY. OWNER in its reasonable discretion may terminate this Agreement by written notice to CITY only after the default by CITY in the performance of a material term of this Agreement and written notice by OWNER thereof to CITY and, where the default can be cured, the failure of CITY to cure such default within ninety (90) days after the effective date for such notice or, in the event that such default cannot be cured within such ninety (90) day period, the failure of CITY to commence to cure such default within such ninety (90) day period and diligently proceed to complete such actions and to cure such default.

10.3 Remedies. In any proceeding relating to any issue arising under this Agreement, the parties may mutually agree to mediation of their dispute. Alternatively, either party may, in addition to any other rights or remedies it may have at law or in equity institute an action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the parties hereto, after exhaustion of administrative remedies.

## 11. THIRD PARTY LITIGATION.

### 11.1 General Plan Litigation.

(a) Limitation. As set forth above, CITY has determined that this Agreement is consistent with the Land Use Regulations (including the General Plan) and meets all of the legal requirements of State law. The parties acknowledge that:

(i) in the future there may be challenges to legality, validity and adequacy of the Land Use Regulations; and

(ii) if successful, such challenges could delay or prevent the performance of this Agreement and the Development of the Property.

In addition to the other provisions of this Agreement, including, without limitation, the provisions of this Section 11, CITY shall have no liability under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan or this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the Land Use Regulations, or portions thereof, are invalid or inadequate or not in compliance with law.

(b) Revision of General Plan. If for any reason the Land Use Regulations or any part thereof are hereafter judicially determined as provided above to be not in compliance with the State or federal Constitutions, laws or regulations, this Agreement shall remain in full force and effect and upon the adoption or amendment of any Land Use Regulations which are necessary in order to comply with State or federal Constitutions, laws or regulations to cure such invalidity or inadequacy, together with any amendments of the Development Plan and the Land Use Regulations which are necessary in order to comply with such new or revised Land Use Regulations, the reference in Section 4 to the General Plan shall thereafter mean and refer to such new or amended General Plan, Development Plan and Land Use Regulations.

(c) Suspension of Obligations. In the event that Development of the Property is enjoined or prevented from proceeding by any judicial order or determination in connection with the determinations regarding the Land Use Regulations referred to above and the subsequent proceedings with respect thereto referred to in paragraph (b) of this Section, the time for performance of the obligations of the parties hereunder shall be extended as provided in Section 14.13.

(d) Option to Terminate. In the event that any such amendments of the General Plan, the Development Plan or Land Use Regulations result in a reduction in the number of units or the density or intensity, or timing, sequencing or phasing of Development, OWNER may terminate this Agreement by notice in writing to CITY and recorded in the official records of CITY.

(e) Opportunity to Intervene. In the event of a challenge to CITY's General Plan, CITY shall provide notice of such action to OWNER and OWNER may elect to intervene in any such action as a real party in interest. CITY agrees not to oppose such intervention.

## 12. EFFECT OF AGREEMENT ON TITLE.

12.1 Covenants Run With The Land. Subject to the provisions of Sections 6 and 14:

(i) All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns;

(ii) All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law; and

(iii) Each covenant to do or refrain from doing some act on the Property hereunder (A) is for the benefit of and is a burden upon every portion of the Property, (B) runs with such lands and (C) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner

through any owner of such lands, or any portion thereof, and shall benefit each party and its lands hereunder, and each other person succeeding to an interest in such lands.

12.2 No Dedication or Lien. Nothing herein shall be construed as constituting a dedication or transfer of any right or interest in, or as creating a lien with respect to, the title to the Property. Any dedication or transfer of any right or interest in the Property shall be made only in accordance with this Agreement.

13. HOLD HARMLESS

13.1 Hold Harmless: OWNER's Activities. OWNER hereby agrees to, and shall defend, indemnify and hold harmless CITY and its elected and appointed boards, commissions, officers, agents, and employees from any and all claims, costs and liability for any damages personal injury or death, which may arise, directly or indirectly, from OWNER's or OWNER's contractors, subcontractors, agents, or employees' operations under this Agreement, whether such operations be by OWNER or by any of OWNER's contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as agent for OWNER or any of OWNER's contractors or subcontractors.

13.2 Hold Harmless: Challenge of Agreement. OWNER further agrees to indemnify, hold harmless, pay all costs, including costs of suit and attorneys' fees, and provide a defense for CITY, upon CITY's tender, in any action challenging the validity of this Agreement or relating to any of the Current Development Approvals, including, but not limited to compliance with any requirement of law, approval or action which is a condition precedent to Development of any portion of the Property.

14. MISCELLANEOUS PROVISIONS.

14.1 Effect of Agreement. Once this Development Agreement is effective, the provisions of this Agreement shall bind the Property, and any part thereof. Notwithstanding the foregoing, nothing herein shall modify, limit or affect in any manner the Quarry Entitlements.

14.2 CITY Acceptance of Mitigation. CITY acknowledges and agrees that compliance with the provisions of Exhibit E with respect to local park requirements through the planned dedication of land, the construction of site improvements and the payment of certain funds for the Recreational Facilities and the dedication of land, the construction of site improvements, the construction of affordable housing units as indicated in Exhibit E and the payment of certain funds for development of the Affordable Housing and the dedication of land and acceptance of use restrictions and the formation of a Geologic Hazard Abatement District and Landscape and Lighting District constitutes full and complete satisfaction of required mitigation of impacts on recreational facilities and parkland, affordable housing, and open space and meets all CITY requirements regarding same.

14.3 Recordation of Agreement. The City Clerk of City shall cause this Agreement to be recorded within ten (10) days after the execution of this Agreement by OWNER and by CITY's City Manager pursuant to the ordinance approving this Agreement in the Official Records of the County of Alameda. Any amendment or cancellation of this Agreement shall be immediately recorded in the Official Records of the County of Alameda.

14.4 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein and no testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

14.5 Severability. If any term, provision, covenant or condition of this Agreement, including but not limited to the Exhibits to this Agreement, shall be determined invalid, void or unenforceable by a final determination by a court of competent jurisdiction, the remainder of, this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Any final determination that any condition in any

Exhibit is invalid, void or unenforceable shall not affect any other condition or portion of any Existing Development Approval which is not also specifically determined invalid, void or unenforceable except to the extent such remaining conditions are rendered impracticable to perform.

14.6 Integration and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California.

14.7 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

14.8 Singular and Plural. As used herein, the singular of any word includes the plural.

14.9 Joint and Several Obligations. If any obligation of OWNER to CITY is the obligation of more than one person, such obligation and any liability with respect thereto shall be joint and several among the obligees.

14.10 Time of Essence. Time is of the essence in:

- (a) The performance of the provisions of this Agreement as to which time is an element; and
- (b) The resolution of any dispute which may arise concerning the obligations of OWNER and CITY as set forth in this Agreement.

14.11 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

14.12 No Third Party Beneficiaries. The only parties to this Agreement are OWNER and CITY. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed to benefit or be enforceable by any other person whatsoever.

14.13 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond such party's control, government regulations other than CITY's, court actions (such as restraining orders or injunctions) or other causes beyond such party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be extended by the period of time that such events prevented such performance provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years or for a period which would cause this Agreement or provisions hereof to be void as violating the rule against perpetuities.

14.14 Attorneys' Fees. In any action or undertaking between the parties hereto to enforce the provisions of this Agreement, each of the parties hereto shall bear its own attorneys' fees.

14.15 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

14.16 Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent certified mail, postage prepaid and addressed as follows:

If to CITY:

Gregory Jones, City Manager  
City of Hayward  
777 "B" Street  
Hayward, CA 94541-5007

With a copy to:

<sup>Assistant</sup>  
Maureen Conneely, ~~Interim~~ City Attorney  
City of Hayward  
777 "B" Street  
Hayward, CA 94541-5007

If to OWNER:

James B. Summers, President  
La Vista L.P.  
11555 Dublin Blvd.  
Dublin, CA 94568

With a copy to:

Michael Willcoxon, Esq.  
11555 Dublin Blvd.  
Dublin, CA 94568

Any notice given as required herein shall be deemed given seventy-two (72) hours after deposit in the United States mail or upon receipt. A party may change its address for notices by giving notice in writing to the other party as required herein and thereafter notices shall be addressed and transmitted to the new address.

14.17 Successors and Assigns. Subject to the provisions of Section 6, the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

14.18 Counterparts. This Agreement may be executed by the parties in counterparts which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

IN WITNESS WHEREOF, the parties. hereto have executed this Agreement on the day and year  
first set forth above.

OWNER: La Vista L.P., a California limited partnership

By: Ernest D. Lampkin  
Ernest D. Lampkin

Its: VP, CFO

CITY: CITY OF HAYWARD

By: Gregory Jones

Its: City Manager

Attest:

Angelina Reyes  
Angelina Reyes, City Clerk



APPROVED AS TO FORM:

By: Maureen Conneely  
Maureen Conneely

Its: Interim City Attorney  
Assistant

- Exhibits:
- A Legal Description of La Vista Project Site
  - B List of Development Approvals
  - C List of Current Development Approvals
  - D Description of Affordable Housing
  - E Conditions of Approval

**ILLEGIBLE NOTARY SEAL DECLARATION**

**(Government Code 27361.7)**

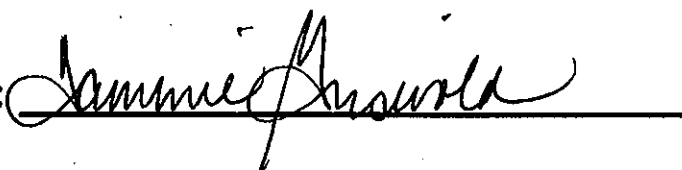
**I declare under penalty of perjury that the notary seal on the document to which this statement is attached, reads as follows:**

**NAME OF NOTARY PUBLIC: J. Gentry**

**COMMISSION NUMBER: 1769279**

**NOTARY PUBLIC STATE: CALIFORNIA**  
**COUNTY: Contra Costa**

**COMMISSION EXPIRES: September 20, 2011**

**SIGNATURE OF DECLARANT:** 

**PRINT NAME OF DECLARANT: Tammie Griswold**

**CITY & STATE OF EXECUTION: HAYWARD, CA**

**DATE SIGNED: July 3, 2008**

**THE ABOVE INFORMATION MUST BE LEGIBLE FOR SCANNING**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of

Alameda

} ss.

On

12-11-07

Date

before me,

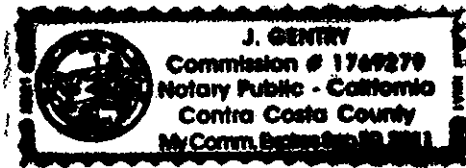
J. Gentry, Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

Ernest D. Lampkin

Name(s) of Signer(s)

☒ personally known to me☐ proved to me on the basis of satisfactory evidence

Commission # 1769279  
Exp. September 20, 2011

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.

J. Gentry  
Signature of Notary Public

**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:

Development Agreement

Document Date:

12-11-07

Number of Pages:

34

Signer(s) Other Than Named Above:

Gregory Jones, Maureen Conneely**Capacity(ies) Claimed by Signer**

Signer's Name:

Ernest D. Lampkin☐ Individual☒ Corporate Officer — Title(s):VP, CFO☐ Partner — ☐ Limited ☐ General☐ Attorney-in-Fact☐ Trustee☐ Guardian or Conservator☐ Other:

Signer Is Representing:

La Vista, L.P.

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of AlamedaOn July 3, 2008 before me, T.L. Griswold, Notary Public  
Date Here Insert Name and Title of the Officerpersonally appeared Gregory T. Jones  
Name(s) of Signer(s)

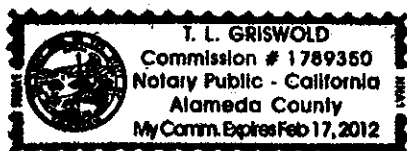
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument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

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

WITNESS my hand and official seal.

Signature

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: Development Agreement - La Vista L.P.Document Date: June 12, 2008 Number of Pages: 74Signer(s) Other Than Named Above: Ernest D. Lampkin**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

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

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

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

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
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**LEGAL DESCRIPTION OF LA VISTA PROJECT SITE**

ALL THE PROPERTY described in the Grant Deed from Warren, et. al. to La Vista, L.P., a California limited partnership dated June 21, 2006 and recorded August 7, 2006 under Recorder's Series Number 2006301610, Alameda County Records:

TOGETHER WITH ALL THE REAL PROPERTY described in the Grant Deed from Dumbarton Quarry Associates, a California general partnership to La Vista, L.P., a California limited partnership dated June 23, 2006 and recorded June 29, 2006 under Recorder's Series Number 2006249458, Alameda County Records:

TOGETHER WITH A PORTION (to be determined later with the Final Map) OF THE REAL PROPERTY described in the Grant Deed from The DeSilva Group, LLC, a California limited liability company to La Vista, L.P., a California limited partnership dated June 23, 2006 and recorded June 29, 2006 under Recorder's Series Number 2006249457, Alameda County Records.

## **LIST OF ALL DEVELOPMENT APPROVALS**

1. General Plan Amendment
2. Zone Change (reclassification and amendments to the Mission-Garin Area Special Design District (SD-5) provisions)
3. Vesting Tentative Tract Map (Tract 7620)
4. Preliminary Development Plan
5. Annexation
6. Precise Development Plan
7. Improvement and Grading Plans, including the Community Park, Tennyson Road, connector road from Alquire Parkway and expansion of the Garin Water System.
8. Final Tract Maps
9. Subdivision Agreements
10. Building Permits
11. Tract Improvements Acceptance
12. Certificates of Occupancy
13. Building Permits Final
14. Abandonment of portions of the Alquire Parkway right-of-way
15. Reclamation Plan

## **LIST OF CURRENT DEVELOPMENT APPROVALS**

1. General Plan Amendment PL-2005-0157
2. Zone Change PL-2005-0158
3. Vesting Tentative Tract Map 7620
4. Preliminary Development Plan
5. Abandonment of a portion of the Alquire Parkway right-of-way

**DESCRIPTION OF AFFORDABLE HOUSING**

## **I. Purpose of Inclusionary Housing Plan**

The Saklan Family Housing Development is designed to bring high quality affordable multi-family housing to the city of Hayward and will serve to meet the inclusionary housing requirements of the DeSilva Group related to the LaVista Quarry single family development. The DeSilva Group is proposing to meet its inclusionary requirement through the off-site construction of affordable apartments. Saklan Family Housing will be comprised of 72 - 82 affordable family apartment units located at North Lane and Saklan Road in Hayward. The unit mix currently consists of 28 one-bedroom units, 20 two-bedroom units, and 32 three-bedroom units. This unit mix is subject to change. Upon approval by the Planning Director, this Inclusionary Housing Plan fulfills the requirement of Section 10-17.310 of the City of Hayward Inclusionary Housing Ordinance.

## **II. Owner/Developer**

### **A. Role of Eden Housing**

#### **Development**

Eden Housing Inc. (EHI) will be the project sponsor and developer of the off-site housing. Eden Housing is a California non profit public benefit corporation which revitalizes communities through an array of development activities and social services that meet the needs of lower income people. EHI was founded in 1968 as a nonprofit, community-based development company through the efforts of a concerned group of citizens living in southern Alameda County. Recognizing the serious lack of good housing for low income residents, these community activists and civic leaders began work on their first project, the 150-unit Josephine Lum Lodge for senior citizens in Hayward. Thirty-three years later, Eden Housing has developed close to 4,500 residential units in over 60 developments (20 in the City of Hayward) and more than 40,000 square feet of commercial space in cities throughout Alameda, Santa Clara, Sonoma, Contra Costa, San Mateo and San Joaquin counties. Today, Eden Housing stands out as one of the most productive and successful nonprofit affordable housing developers in Northern California. Eden is recognized in the industry for its creative development approach that includes collaborating with local governments and tailoring projects to suit the locale.

#### **Property Management**

Eden Housing's property management firm, Eden Housing Management, Inc. (EHMI), will be the project property manager. Since its establishment in 1984, EHMI has provided professional, quality management for Eden's properties. EHMI is committed to the long-term maintenance of its properties. EHMI currently manages more than 2,400 units of rental housing for Eden Housing and third party owners. Through careful attention to issues as they arise and consistently sound managerial practices, EHMI far exceeds management industry standards for bad debt, lost rent write-offs and vacancy factors. EHMI's work is an integral part of the community development plan of the organization. The attention placed on management represents a long-term investment that goes well beyond bricks and mortar and speaks to Eden's goal of building communities. EHMI's central staff operates closely with a host of on-site personnel who tend to the daily needs of the properties and to the people who live in them.

#### **Social Services**

Eden Housing Resident Services, Inc. (EHRSI) will provide resident services. EHRSI was formed in 1995 as the Resident Services Department of EHMI, incorporated as a separate affiliated agency of Eden Housing in 1998, and designated a 501(c)(3) nonprofit organization by the IRS in March, 2000. Here, Eden links well-built and carefully managed housing with resources that support residents in their daily lives. Trained, qualified Resident Services Coordinators are on-site to offer important information and referral services and to implement key programs: child-care, after-school and summer activities, computer learning programs, and support for the frail elderly, to name but a few.

**Project Ownership:**

Saklan Lane Family Housing Apartments, will be owned and operated by a California limited partnership to be formed by Eden Housing. Eden Housing will be the initial managing general partner of the partnership. Prior to the time the project is put into operation, a 501(c)(3) nonprofit affiliate of Eden Housing will become the managing general partner, holding a .10% interest in the partnership. The tax credit investor will become the limited partner, holding a 99.90% interest in the partnership.

**Land Transfer:**

The DeSilva Group will acquire the site located at Saklan Road and North Lane and sell the property to Eden Housing, Inc. for \$1. The terms of the sale will be detailed in a purchase and sale agreement between DeSilva and Eden and will include the demolition of the current structures and grading of the site.

### III. Development Conceptual Design

#### A. Number/Type of Units & Affordability Mix

Saklan Family Housing is a new affordable rental housing development that will serve very-low-income and low-income households in Hayward. Units will range from 30% to 60% of the County Area Median Income. The mix of units, square footage and rents are subject to change. However, the unit mix will meet the affordability requirement specified in the Inclusionary Housing Ordinance, which is that 50% of the affordable housing units are to be affordable to very-low-income households and 50% of the affordable housing units to be affordable to low-income households. "Very-low-income" is defined as less than or equal to 50% of the County Area Median Income (AMI). "Low-income" is defined as greater than 50% of AMI but less than or equal to 80% of AMI. To ensure these units remain affordable, 55-year affordability covenants will be approved by the City and recorded with the County Clerk prior to the start of construction. A 55-year regulatory agreement will also be recorded by the California Tax Credit Allocation Committee which will include similar affordability restrictions.

Income Level	Square Footage	Projected Rent
<b>Low Income (60% AMI)</b>		
1BR	630	\$700
2BR	919	\$1,066
3BR	1,073	\$1,227
<b>Low Income (50% AMI)</b>		
1BR	630	\$700
2BR	919	\$880
3BR	1,073	\$1,012
<b>Very Low Income (40% AMI)</b>		
1BR	630	\$581
2BR	919	\$694
3BR	1,073	\$797
<b>Very Low Income (30% AMI)</b>		
1BR	630	\$426
2BR	919	\$508
3BR	1,073	\$582
<b>Manager's Unit</b>		
2BR	919	

## B. Type of Construction/Architectural Style/Site Plan Description

Saklan Family Housing will be comprised of 72 - 82 units. The current unit mix consists of 28 one-bedroom units, 20 two-bedroom units, and 32 three bedroom units. This mix is subject to change. The project's site plan has been designed to foster a strong sense of community while also allowing for a sense of privacy for each resident. There will be fourteen two and three-story buildings. The individual apartments are not entered via an internal central corridor. Each apartment will have its own entrance and either a private porch or balcony. A main picnic area will encourage interaction by residents and facilitate the development of neighborhood bonds. In addition, there will be a 2,000 square foot community building that will house a computer learning center, an assembly room and management offices. Laundry facilities will be conveniently located in several locations for the residents. There will also be two fenced tot lots on the site and an outdoor barbecue and recreation area.

The Community Building will house a large central meeting room and office space for the development's resident manager and service coordinator. Management will be provided by Eden Housing Management, Inc. (EMHI), and on-site services will be provided by Eden Housing Resident Services, Inc. (EHRSI). A key feature of the Community Building will be the Computer Learning Center, which will be equipped with computer workstations that will include internet access. EHRSI recently developed a prototypical computer learning curriculum at another of Eden's family rental housing developments and will replicate this program at Saklan Family Housing. The Learning Center's mission is to provide computer resources for the educational, employment and social needs of children and adults. Programming for adults will focus on skills development through classes and individual tutoring to assist residents in obtaining professional level computer skills and enhancing residents' employability.

## C. Preliminary Conceptual Site Plan

Subject to additional formal review, attached as Exhibit A, is the proposed site plan for the development. The site plan is not intended to be in its final form and is not included for the purpose of design review approval. We anticipate working closely with the City staff to refine this plan. Additional formal submittals for the project will follow at a later date.

## D. Preliminary Marketing Plan

A marketing plan which describes how Eden will inform the public, and those within the appropriate income groups, of the availability of the affordable units is attached as Exhibit B.

# IV. Development Affordability

## A. Potential Financing Sources

### Construction Sources

Expected funding sources for acquisition and construction costs are as follows:

Conventional Construction Loan	\$18,187,531
Other contribution	\$2,063,857
<b>Total</b>	<b>\$20,251,388</b>

### Permanent Sources

Expected funding sources for permanent costs are as follows:

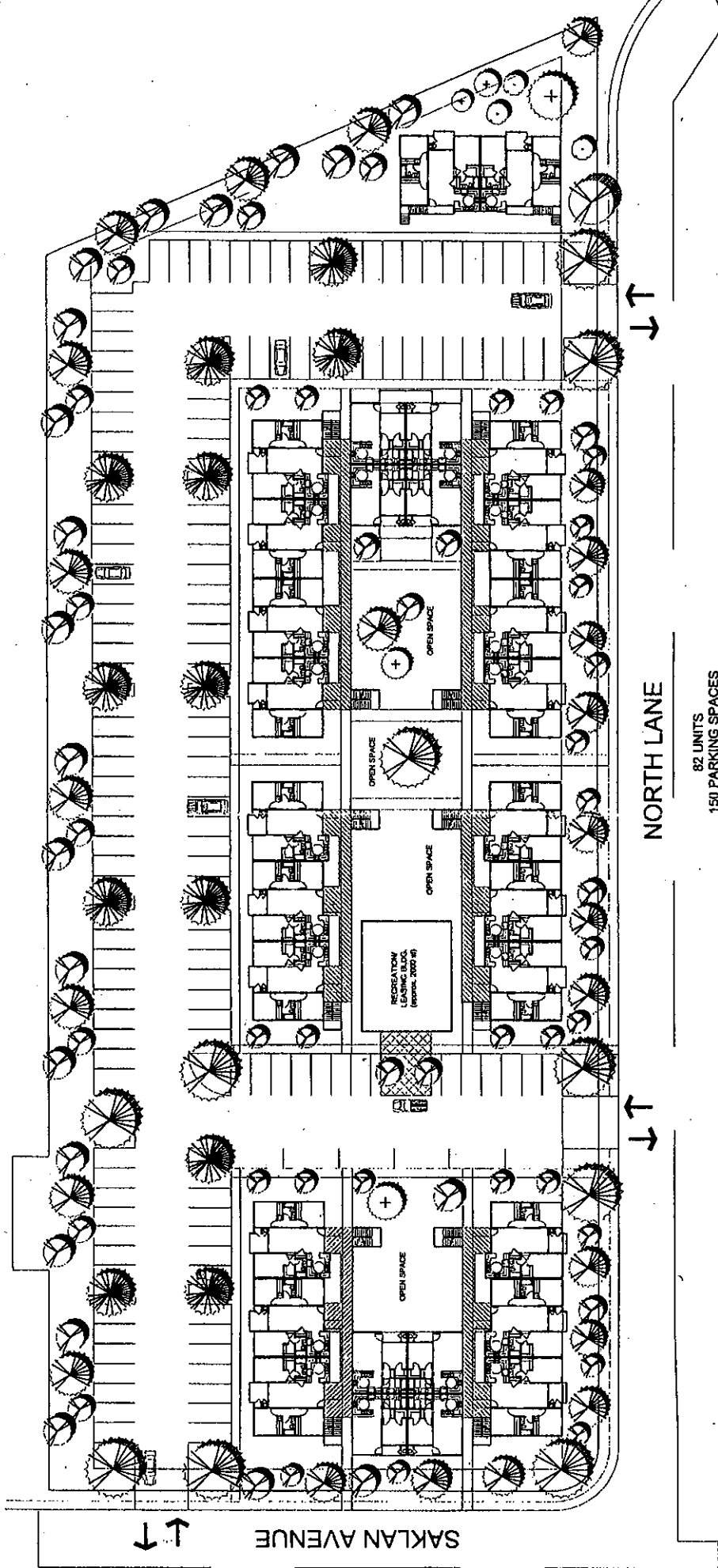
Other Contribution	2,063,857
Tax credit private investment	\$14,925,837
General Partner Contribution	14,926
Conventional Permanent Loan	\$4,031,778
Deferred Developer Fee	\$250,000
<b>Total</b>	<b>\$21,286,398</b>

## V. Schedule

The estimated development schedule is shown below:

### DEVELOPMENT TIMETABLE

Execute Purchase Agreement	June 2005
Planning Commission Approval	November 2005
City Council Approval	January 2006
Tax Credit Funding application	March 2006
Acquire Site	September 2006
Receive Building Permits	September, 2006
Close Construction financing	October 2006
Start Construction	November 2006
Complete Construction	March, 2008
Occupancy	June, 2008



82 UNITS  
150 PARKING SPACES  
1.83 SPACES/ UNIT  
(44) 3-Bedrooms or 54%  
(30) 2-Bedrooms or 36%  
(8) 1-Bedrooms or 10%

scale = 1:50

**Site Plan**  
**Scheme 1**

**SAKLAN AVENUE**

Hayward, California

Eden Housing & The DeSilva Group

KTGY, Group

June 14, 2005

#20041055

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## PRELIMINARY MARKETING PLAN

### SAKLAN AND NORTH AFFORDABLE HOUSING

#### General Information

Saklan and North Affordable Housing is a 72-82 unit affordable multifamily rental complex for individuals and families which is located between at Saklan Road and North Lane in Hayward, California. The property should be ready for occupancy in the Spring of 2008. The units will be affordable to persons earning up to 60% or less of the area median income. The development is a collaborative effort between the City of Hayward and Eden Housing Inc. Eden Housing Management Inc., an affiliate of Eden Housing, Inc., will be the management agent for the property.

There will be \_\_\_\_ one bedroom, \_\_\_\_ two bedroom and \_\_\_\_ three bedroom apartments. One two bedroom apartment at the property will be occupied by the Resident Manager or Maintenance person. There will be \_\_\_\_ units accessible for people with mobility impairments, and \_\_\_\_ units accessible to people with hearing or vision impairments, and all units will be 100% adaptable unit for use by the physically handicapped. Each unit will have a \_\_\_\_\_ range, a frost free refrigerator, dishwasher and mini blinds.

Advertisements will be run in the local newspaper, minority newspapers and flyers will be faxed/mailed to local businesses and Agencies including city offices and local schools. The application period will extend for two months in late 2007 approximately 4 months prior to construction completion. It is expected that the City of Hayward will require Preference for a certain percentage of the units be given to eligible and income qualifying employees of the city. A lottery will determine an applicants' place on the waitlist.

#### Outreach

To begin outreach, flyers will be faxed and/or mailed to local businesses including the city offices and local public schools. Information packets and applications will be available at local locations (exact locations will be determine later)

#### Qualifying for Residency

Residents must qualify based on the maximum allowable income limits adjusted for household size. All applicants will be screened by Eden Housing Management for eligibilty purposes. Applications will be processed by Eden Housing Management Inc. in lottery number order, with applicants having a preference getting priority over applicants without a preference.

Income-qualified applicants (individuals or families) will have a gross income (adjusted by family size) which does not exceed 80% of the median income for the area. Credit and eviction checks will be completed for all household members over the age of 18 years. Third party verifications will be obtained to verify income, assets, landlord and preference as part of meeting the regulatory requirements of the housing program.

Household size must be appropriate for the unit. The size of the unit that an applicant qualifies for is dependent on their household size and any verifiable special needs. In general, maximum occupancy is calculated as two people per bedroom, plus one additional person.

The minimum and maximum standards are as follows:

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### Occupancy Standards

Unit Size	Minimum Number of Persons in Household	Maximum Number of Persons in Household
1 bedroom	1	3
2 bedroom	2	5
3 bedroom	3	7
4 bedroom	4	9

**Fair Housing**

To comply with the Affirmative Fair Housing Marketing Guidelines, prospective renters will be recruited in a strategy designed to ensure equal access for all persons in any category protected by federal, state, or local laws governing discrimination. All advertising will include the Equal Housing Opportunity logo and the ADA logo.

Each household applying must fill out an application for rental; that application will be pre-screened for completeness and will be date and time stamped. Applicants submitting incomplete applications will be sent a denial letter and will be given an opportunity for correction within 14 days of the date of the denial letter. All applications received by the deadline will be entered into a rent-up software program. The software program will assign random lottery numbers to each application. Applications will then be processed in lottery number and preference order.

Applicants at the top of the waiting list will be required to bring in a credit check fee of \$33.00 per adult household member. Credit Checks will be completed for all adult household members. Applicants with negative credit will be sent a denial letter with an opportunity for correction and or appeal within 14 days of the date of the denial letter.

Qualified applicants will then be scheduled for a personal interview. All adult household members will be required to attend the interview. Management will complete necessary authorization for release of income and asset information and have applicants sign the verifications. Verifications will be mailed to the respective sources along with self addressed stamped envelopes.

As applicants are interviewed, verifications returned by source, income and asset calculations complete, qualified applicants will be offered a unit. All other applicants will remain on the waiting list.

All applicants who are not selected as residents during the rent up period will remain on a waiting list in lottery number order. Additional households will be added to the waiting list on a first come, first served basis. The waiting list will be updated every six months to ensure that those applicants on the waiting list wish to remain on the list. Applicants will be selected from the waiting list as vacancies occur. A postcard will be mailed to each person on the waiting list at the time it is updated. People who wish to remain on the list should return the postcard, or notify the property independently. Each applicant will be instructed to report changes in family size or income as those changes may impact on eligibility.

**Unit Selection**

After qualifying for occupancy, the selected applicants will be assigned units within the following limits: The applicant may turn down the first unit he/she is offered and retain his/her spot on the waitlist. The second time an applicant declines to move into a unit will result in the person being removed from the waiting list and will have to re-apply when the waiting list is re-opened.

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**CONDITIONS OF APPROVAL**

**CONDITIONS OF APPROVAL**

**LA VISTA DEVELOPMENT  
28816 MISSION BOULEVARD**

**Vesting Tentative Tract Map Application No. PL-2005-0156 TTM 7620;  
General Plan Amendment Application No. PL-2005-0157 GPA;  
Zone Change Application No. PL-2005-0158 ZC**

**The DeSilva Group (Applicant)**

The effective date of these approvals shall be the same as the effective date of the recordation and execution of documents associated with annexation of the property into Hayward.

Planned Development District No. PL-2005-0158 ZC to accommodate construction of 179 single-family homes shall be developed according to these conditions of approval and in substantial conformance with the preliminary development plan labeled in the City files as "Exhibit A." Prior to final inspection, all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the Planning Director.

The Zone Change for the Planned Development District becomes void two years following the effective date of approval of the Preliminary Development Plan by the City Council, unless before that time, a Precise Development Plan is submitted. A one-year extension for the Preliminary Development Plan, approval of which is not guaranteed, may be granted by the City Council, provided the request for such extension is submitted at least 30 days prior to the expiration of the original approval. A request for a second one-year extension, approval of which is not guaranteed, may also be granted by the City Council, provided the request for such second extension is submitted at least 30 days prior to the expiration of the first extension.

This approval is tied to Development Agreement between La Vista L.P., and the City of Hayward (Application No. 2005-0317 DA) and all conditions of approval of that agreement shall also apply to this approval.

The permittee shall assume the defense of, and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.

Any proposals for minor alterations to the proposed site plan and/or design that do not require a variance to the Zoning Ordinance standards must be approved by the Planning Director prior to implementation.

Unless otherwise stated, all necessary easements shall be dedicated, and all improvements shall be designed and installed at no cost to the City of Hayward.

The applicant/developer's engineer shall perform all design work unless otherwise indicated.

All improvements shall be designed and constructed in accordance with the City of Hayward Municipal Code – Chapter 10, Article 3, and Standard Specifications and Details – unless otherwise indicated hereinafter.

In addition to the City of Hayward Standard Specifications and Details, the following requirements and conditions apply, and shall be incorporated in the project plans and specifications as applicable:

**PRIOR TO APPROVAL OF THE PRECISE DEVELOPMENT PLAN**

1. Prior to submittal of improvement plans and final map(s) for the development, a Precise Development Plan consistent with the approved Preliminary Development Plan shall be submitted for approval by the Planning Director and shall include detailed landscaping and irrigation plans, detailed plans for all site amenities, including decorative paving, decorative electroliers, fencing, sign and entry features, detailed architectural and lighting plans, samples of exterior colors and building materials, and screening of all above-ground utilities, transformers and utility meters. The precise plan shall also reflect the ultimate configuration of the streets and other public improvements, including those associated with the community park/detention basins, additional park area/detention basins or, if applicable, the community center. The Precise Development Plan shall include/address the following:
  - a. A copy of these conditions of approval shall be included on a full-sized sheet(s) in the plan set.
  - b. A color and materials board, consistent with that proposed with the preliminary development plan, shall be submitted to the Planning Director for review and approval. No changes to colors shall be made after construction unless previously approved by the Planning Director.
  - c. Adjustments that can be easily accommodated are to be made to lot lines for certain lots to make them compliant with the City's minimum side yard setback standards, including lots 54, 57, 105, 164 and 165, 171, 172 and 173 and 179.
  - d. Enhanced rear elevations shown in the submitted plans indicated as "Exhibit A" shall be used for units on certain street corners (lots 1, 33, 85, 96, 112, 130, 146 and 175) as well as for units on lots along the western and southern perimeter of the development that would be visible from the proposed park area and from nearby residences (lots 1 through 13, 54 through 56, 164 through 171, and 175 through 179).
  - e. No solid wood fencing is allowed along the slopes between rows of homes, except along the base of the slopes on "downhill lots," nor is solid wood fencing allowed along the rear perimeter of any lots that abut the eastern slopes (lots 56 through 74, 172 and 179), nor along the rear perimeter of lots overlooking the parkland (lots 1 through 13).
  - f. Details and heights of all proposed retaining walls shall be included. All retaining walls shall be constructed of reinforced concrete or be keystone walls, with a decorative facing, approved by the Planning Director and the City Engineer. No retaining wall shall exceed six feet in height, as measured from finished grade.
  - g. Show details for all fencing and walls proposed throughout the development, including retaining walls proposed along the base of sloped between rows of homes. Masonry walls along perimeter property lines or open space shall be screened with vines and shrubs.

- h. Show details of the proposed two sets of walls, signs and entry columns, the entry monolith and other improvements proposed at the Tennyson Road development entrance, the entry feature at the southern entrance and the landscaping, trails and paths within common open space areas, to be consistent with the architectural style of the project. Such features shall not impede sight distance for drivers in vehicles and shall be reviewed and approved by the Planning Director. The height of the entry columns shall be reduced and one of the two entry walls/columns shall be eliminated, to provide entry features that are more compatible with the rural, open setting of the surrounding area.
- i. No development signage is allowed along Mission Boulevard at Tennyson Road. No other entry features are allowed along Tennyson Road, except those near the entry to the subdivision, in the location as shown on the preliminary development plan.
- j. Pavers and road treatments as shown on the project landscape plans along the Tennyson Road extension within the development shall be required. The specific location, design and materials shall be approved by the Planning Director.
- k. Mitigation Measure I-d: In accordance with MG EIR Mitigation Measure 4.1-3, a detailed lighting plan shall be provided, to be submitted as part of a precise development plan, to incorporate fixtures that shall ensure that lighting off of the project site will be minimized, to prohibit landscape uplighting, with fixtures and plan to be approved by the Planning Director.  
Exterior lighting shall be erected and maintained so that adequate lighting is provided in all common areas. The Planning Director shall approve the design and location of lighting fixtures, which shall reflect the architectural style of the building(s). Exterior lighting shall be shielded and deflected away from neighboring properties and from windows of homes within the project.
- l. As required by the Planning Director, a street tree plan and landscape and irrigation plans for front yards plus any side or rear yard slopes shall be submitted for review and approval by the City. Where lots have slopes within the property that are 3:1 or greater, all such slopes should be landscaped and irrigated by the developer. Front yards shall be limited to a maximum 50% Fescue turf.
- m. Landscape plans shall specify site amenities such as, benches, tables, fencing, play equipment and barbecues, for the common open space areas.
- n. Standard driveway flares shall be provided at each unit to prevent vehicles from driving over required landscaping and irrigation. A minimum of 5 feet of landscaping shall be provided between the driveways on 2 pack lots.
- o. Given the reduced setbacks of the homes to the back of sidewalk or curb, the joint trench will need to be located within the street to allow installation of required front yard landscaping.
- p. All exposed drainage systems shall be constructed of materials that blend with the natural environment (e.g., grassy swales or river rock).
- q. Show an exterior hose bibs for each private yard, patio or porch area on the ground floor.
- r. Details of address numbers shall be provided. Address number shall be decorative. Building addresses shall be minimum 4-inch self-illuminated or 6-inch on contrasting background. Address numbers shall be installed so as to be visible from the street.
- s. If grouped mailboxes are proposed, they shall be comprised of high quality locking mailboxes within covered decorative shelters. The locations, design, material and

- color of these structures are to be consistent with the overall project design theme and to be approved by the Planning Director.
- t. All air conditioners and utility connections for air conditioners shall be located such that all external equipment is located within an area that can be screened, and located so as to minimize noise impacts on adjacent properties. Infrastructure for air conditioning systems is required to be installed as a standard feature.
  - u. Garbage and recycling receptacle areas shall be adequately screened from public view with landscaping and/or solid screens, to be approved by the Planning Director, or be provided within garages, in which case shall be clear of the required parking area for two cars.
  - v. All above-ground utility meters, mechanical equipment and water meters shall be enclosed within the buildings or shall be screened from the streets with minimum five-gallon shrubs and/or an architectural screen, to be approved by the Planning Director.
  - w. No mechanical equipment shall be placed on the roof unless it is completely screened from view by the proposed roof structure. Roof apparatus, such as vents, shall be painted to match the roof color. All roof vents shall be shown on roof plans and elevations. Vent piping shall not extend higher than required by Building Code.
  - x. Regarding the architectural details/plans for submittal with the Precise Development Plan:
    - i. The variety of garage door designs/details as shown on architectural plans marked as "Exhibit A," associated with the Preliminary Development Plan, shall be incorporated into final design.
    - ii. The stone veneer trim proposed for Plan 1B shall be used for the trim around the front entry door and garage door.
    - iii. For some of the Plan 2 units in the "two-pack" arrangement, a freestanding wood trellis/arbor over the driveway by the garage shall be incorporated, to provide opportunities for landscaping/vines that would help visually "separate" such units from the adjacent Plan 3 units.
    - iv. For Plan 2A - left elevation, the stone veneer should be continued over the entire wall section in the left-front portion of the home.
    - v. For Plan 2D, the trim around the front entry arch should be stone veneer or some other natural-appearing material, other than stucco, to provide some architectural interest and accentuation of such feature. (Same comment applies to the arch on the front elevation of Plan 3A.)
    - vi. For Plan 2A - enhanced rear elevation, additional wrought iron details should be incorporated into the second floor elevation, outside the master bathroom windows.
    - vii. For Plan 4, rear elevation, consideration should be given to providing additional features and massing (i.e., arch, trellis, etc.) to the support structures for the second floor balcony, to make the balcony appear to be more of an extension of the main structure.
  - y. All plant material must be fire, drought, and deer resistant. All areas within 100 feet of the lots must have permanent irrigated landscaping.
  - z. The non-irrigated slopes need to be pulled farther away from the project entry, the new houses behind lots 1 through 13, along the street behind lots 55 and 56, and in front of the existing houses to the south where the new road extends to the south, or

- shall be irrigated. Where areas are proposed to remain in permanent non-irrigated slopes, a method for the short term and long term maintenance for these slopes must be proposed and approved as part of a Fuel Management Plan.
- aa. *Schinus molle* is not on the list of fire resistant plants and should not be used on this site, to be substituted with another species acceptable to the City Landscape Architect, such as *Pistache chinensis* or California native species such as Bay, Buckeye, Redbud, Pacific Dogwood, California Sycamore, or Vine Maple.
  - bb. Additional landscaping to be consistent with the approved Fuel Management Plan, shall be provided along the rear property lines of those lots located along the west side of Street "A," to provide screening of the rear yard areas of those homes.
  - cc. Pedestrian access from the development shall be provided as shown on the submitted Preliminary Development Plan marked in the City's files as "Exhibit A," with the following enhancements: all paths and trails shall be extended to the community park site from the development, an additional path/trail shall be provided between lots 13 and 55, an additional path/trail shall be provided from the park site to Tennyson Road in the western portion of the tract, to accommodate pedestrians walking up Tennyson Road towards the park. These areas shall include permanent landscaping and entry features.
  - dd. Street trees shall be provided in accordance with the City's standards, which require one 24-inch box tree in the front yard of each lot. Also, 24-inch box trees are required at a minimum average density of at least 20 to 40 feet on center (depending on the species of the trees that are chosen) along all streets within the development and along all portions of Tennyson Road and along the Alquire Parkway connector road leading to the development from the south. Distances between street trees along roads can be varied, but there shall not be any gaps of over 50 feet between trees and the total number of trees shall equal the minimum required.
  - ee. Shrubs shall be planted along disturbed slopes to provide for re-vegetation and naturalization of these areas, to be approved by the City's landscape architect.
  - ff. In accordance with the City's Tree Preservation Ordinance, trees shall be provided to mitigate for any protected trees that are removed, with such trees to be at least equal in value to the trees that are being removed. These mitigation trees are required to be in addition to any required street trees, screening trees, or parking lot trees.
  - gg. A Fuel Management Plan and Homeowners' Educational Addendum is required for the development.
  - hh. In accordance with Fire Code requirements for Planned Unit Developments and with the Mission-Garin Area Special Design District standards, an exception to the 12% maximum road grade standard shall be secured from the Hayward Fire Department and the City Engineer, and a determination made by the Planning Director that steeper grades would minimize significant grading.
  - ii. A phasing plan shall be submitted with the Precise Plan for approval by the Planning Director, which shall include the possible phasing of common area improvements.

**PRIOR TO APPROVAL OF, OR RECORDATION OF, THE FINAL MAP(S)**

2. The unincorporated territory involved within the boundaries of the vesting tentative map (Tract 7620) shall be annexed into the City of Hayward.

**Inclusionary Housing Plan**

3. Prior to recordation of the final map or first final map, the applicant shall purchase the approximately 3.53 acre property located at the northeast corner of North Lane and Saklan Road (22958 Saklan) in Hayward, shall demolish existing structures and “clean” the property of environmental contaminants, shall sell such property in fee simple to Eden Housing, Inc., for the price of \$1.00 and shall pay for required off-site improvements for such project.

In accordance with the applicant's Inclusionary Housing Plan, applicant will assure that 27 rental units, affordable to low and very low income households, are constructed as part of a 72-82 unit rental housing development to be built by Eden Housing, Inc. on that property.

The balance of the units may be reserved for possible future affordable housing obligations for other properties in which the applicant would have an equitable interest, to be used within five years from the effective date of the associated development agreement.

Also, in accordance with applicant's Inclusionary Housing Plan, no more than 50 building permits shall be issued for applicant's La Vista development prior to the commencement of site work for the Saklan Road development. Furthermore, building permits for an additional 50 more housing units or the La Vista Development may be issued if it is determined by the City that substantial progress has been made in development of the Eden Housing site. In the event the Saklan Road project does not reach Certificate of Occupancy for 27 rental units affordable to low and very low income households, applicant shall make 27 units of ownership housing in the La Vista Quarry development available for purchase by households of moderate income at a price set forth for such units in accordance with the City's Inclusionary Housing Ordinance.

**IMPROVEMENTS**

Improvement plans shall be submitted to the City Engineer for review and approval. Subject plans shall, in addition to the standard improvements, incorporate the following special design requirements:

**Recreational Facilities**

4. The applicant shall construct improvements, including drainage facilities, detention basins and maintenance roads and recreational amenities, such as playfields, play structures and trails/paths and parking areas within the approximately 30-acre area designated as Parcels B and P on the vesting tentative tract map, with the costs of such improvements to be equal in value to the required park dedication in-lieu fee in effect at the time building permits are issued for the development. Such fees associated with this Planned Development equal approximately \$2.14 million, as of July 1, 2005. Such improvements are to be approved by the City after consultation with the Hayward Area Recreation and Park District and shall be reviewed as part of the Precise Development Plan review process.

5. The future construction of a new Community Center shall meet Fire Department access requirements.
6. Prior to issuance of first building permits, the applicant shall contribute \$1.5 million toward construction of a new community center to be located within Parcel B as shown on the vesting tentative tract map, or in the general vicinity. Such contribution shall be in addition to any other obligations.

### Streets

7. An Encroachment Permit must be obtained prior to the start of any construction within the City of Hayward right-of-way.
8. An Encroachment Permit must be obtained from the California Department of Transportation (CalTrans) prior to the start of any construction within their right-of-way.
9. Upon any necessary repairs to the facilities under the on-site decorative paved areas, the City shall not be responsible for the replacement cost of the decorative paving. The replacement cost shall be borne by the homeowners association established to maintain the common areas within the subdivision boundary.
10. The site plan shall be reviewed with the Fire Department and Engineering and Transportation Division to ensure that the street and driveway layout is adequate to provide access for emergency, service and utility vehicles, and other commercial trucks. Changes may be necessary including increasing corner radii, driveway widths or intersection alignments.
11. As was originally intended, the temporary traffic signal at the intersection of the La Vista Quarry access road and Mission Boulevard shall be removed when it is no longer needed for Quarry operations, per the original Caltrans' approval of the signal. Removal and modifications to the intersections shall be approved by Caltrans and the City Engineer.
12. The La Vista Quarry access road shall be removed and the area revegetated, to the satisfaction of the City Engineer, CalTrans and the City Landscape architect, prior to acceptance of subdivision improvements.

### Tennyson Road

13. The public street (Tennyson Road) shall be extended from Mission Boulevard to the development to provide access for the subdivision. The developer shall obtain, and grant to the City, all necessary right-of-way and slope easements to construct a 36-foot wide street within a 60-foot right-of-way, excluding those portions that cross the State's property. The street shall have a four-foot wide separated sidewalk along one side, extending the full length from Mission Boulevard to the subdivision.
14. The intersection with Mission Boulevard shall be modified to accommodate required traffic lanes, medians and signal equipment. The design for these improvements must be approved by both the City and CalTrans prior to construction.

15. Handicap ramps shall be installed where required by the City Engineer.
16. Decorative pavements shall be capable of supporting a 50,000 lb. gross vehicle weight load. Curb returns shall have a minimum radius of 30 feet at the curb face.
17. The entry features, signs and monuments shall be designed to not impede sight distances.
18. New standard streetlights shall be installed along the street frontage. The design and location shall be approved by the City Engineer. If decorative street lights will be used, the design and spacing must be reviewed and approved by both the Planning Director and City Engineer.
19. The side slopes shall be graded in a naturalistic manner consistent with landform grading techniques, and shall not be uniform engineered slopes, to be approved by the City Engineer.
20. A driveway, or, if necessary, a road approach shall be constructed to provide access to the Durazo (APN: 078C-0650-001-16 and -17), Tavake (APN: 083-0100-001-01) and Ersted (APN: 078C-0461-001-13) properties. The locations and widths shall be approved by the City Engineer. Emergency vehicle access must be provided at all times during construction.

Alquire Parkway

21. The street shall be extended with City standard curb, gutter, sidewalk and conform paving from its existing termination south of the project site to its connection with "A" Street to provide access to the subdivision. Any curb, gutter or sidewalk damaged along the existing frontage shall be removed and replaced.
22. The side slopes shall be graded in a naturalistic manner using landform grading techniques.
23. The eastern-most portions of the existing Alquire Parkway right-of-way shall be abandoned and necessary easements recorded to provide continued access for affected residents and for existing and future underground utilities. Such areas shall be revegetated and landscaped, to the satisfaction of the City Landscape Architect.
24. The connection of the driveway serving the affected residents impacted by the right-of-way abandonment shall be designed as a driveway intersection. The driveway and intersections must be reviewed and approved by the Fire Department.
25. The connection of the new road connecting Alquire Parkway to Bodega Street shall be designed as a driveway intersection. The connector road and intersection must be reviewed and approved by the Fire Department.
26. New standard street lights shall be installed along the street frontage. The design and location shall be approved by the City Engineer.

Interior Public Streets

27. The interior public streets A, B, D and E shall have a 46 foot right-of-way width, 36 feet curb to curb to allow for two travel lanes and parking. Street C shall have a 40 foot right-of-way, 28

feet curb to curb, to allow two travel lanes and parking on the west side. Street design shall utilize standard curb and gutter, and street sections shall be constructed to public street standards. Handicap ramps shall be installed to facilitate access and circulation throughout the development. Roadway slopes currently exceed the allowable 12% grade. Unless redesigned, these slopes must be approved by the City Engineer, Planning Director and Fire Department and may require additional special conditions relative to fire protection and building construction.

28. Street intersections shall be designed and constructed per City Standard Detail SD-110A.
29. Streetlights shall be installed along all street and cul-de-sac frontages. Pedestrian lighting shall be provided throughout the development, including along the trails and interior walkways. Streetlights and pedestrian lighting shall be owned and maintained by the homeowners association and shall have a decorative design approved by the Planning Director and the City Engineer.

### **Parking and Driveways**

30. The applicant/developer shall provide sufficient parking spaces for the development to meet the requirements of the City of Hayward Municipal Code. Parking stall dimensions and driveways shall meet City requirements as approved by the Planning Director and City Engineer.
31. Driveways shall be constructed per Standard Detail SD-109 and shall be the same width as the garage door. Standard driveway flares shall be provided at each unit to prevent vehicles from driving over required landscaping and irrigation. A minimum of 5 feet of landscaping shall be provided between the driveways on 2 pack lots.
32. ADA compliant parking stalls and loading areas shall be located adjacent to each open space within the development. Handicap ramps and accessible pathways shall be provided throughout the project, per federal and state standards and exceptions.
33. If group mailboxes are used throughout the development, parking spaces shall be provided adjacent to the group mailboxes and shall be designated as 10 minute parking only.

### **Landscaping and Irrigation**

34. Prior to the approval of the improvement plans, a detailed landscaping and irrigation plan for all common areas, front yard areas to fence lines and all rear slope areas shall be prepared by a licensed landscape architect and submitted for review and approval by the City's Landscape Architect. Planting and irrigation plans shall comply with the City's *Water Efficient Landscape Ordinance*.
35. Prior to issuance of the first 50 building permits for homes, the developer shall form a Landscape and Lighting District to fund operation and maintenance of common areas within the development. Prior to approval of the first final map, the developer shall provide a \$10,000 deposit to the City to cover the costs associated with formation of the District. The exact limits of responsibility for the District will be determined during processing of the Precise Plan for the development.

36. Within all required landscape areas, a complete automatic sprinkler system with an automatic on/off mechanism shall be installed. A hose bib shall be provided within each private yard.

**Storm Drainage**

37. The on-site storm drain system within the development, excluding that located within the public right-of-way, shall be a private system owned and maintained by the homeowners association or property owners.
38. The Hydrology and Hydraulics Criteria Summary, Alameda County Flood Control and Water Conservation District, latest edition shall be used to determine storm drainage runoff. A detailed grading and drainage plan with supporting calculations and a completed Drainage Review Checklist shall be reviewed and approved by the Alameda County Flood Control and Water Conservation District and the City Engineer. Development of this site is not to augment runoff to the District flood control facility downstream, Line D. The hydrology study shall substantiate that there will be no net increase in the quantity of runoff from the site versus the flow rate derived from the original design of Line D and any augmented runoff will need to be mitigated on-site.
39. A Storm Water Pollution Prevention Plan (SWPPP) shall be submitted with a design to reduce discharge of pollutants and sediments into the downstream storm drain system. The plan shall meet the approval of the City Engineer.
40. Mitigation Measure VIII-a: Per State regulations, a Notice of Intent (NOI), and Storm Water Pollution Prevention Plan (SWPPP) and Stormwater Quality Protection Plan shall be prepared and submitted to the State for review and approval. These documents shall also be submitted along with the grading permit application for review and approval by the City of Hayward. Grading and construction plans shall incorporate erosion and sedimentation control measures to be implemented during all phases of construction activities. The improvement plans for the project shall incorporate Best Management Practices (BMP's) designed in accordance with applicable provisions of the Alameda County Clean Water Program NPDES permit Section C.3, including the hydraulic sizing criteria, which will ensure that storm water runoff is treated prior to discharge from the site and that runoff rates are such that downstream impacts are reduced to the maximum extent practical.
41. Mitigation Measure VIII-c: The development plans for the site will not substantially alter the drainage pattern of the area. The development's improvement plans will incorporate BMP's, including erosion and sedimentation control measures, that will treat all water prior to discharge and will ensure that the discharge rate from the site is consistent with existing rates.
42. The developer shall provide a copy of the Notice of Intent filed with the State Water Resources Control Board, prior to the issuance of a grading permit for the project site.
43. The project plans shall include storm water measures for the operation and maintenance of the project to be approved by the City Engineer. The project plans shall identify and incorporate

Best Management Practices (BMPs) appropriate to the uses conducted onsite to effectively prevent the entry of pollutants into storm water runoff. Roof leaders shall discharge into a landscaped area prior to storm runoff entering a pipe system.

44. The tentative map shows several detention ponds to be used for treatment of storm water runoff. If ponds are utilized, they must incorporate access roads around the ponds to facilitate maintenance and allow access to inlet and outlet facilities.
45. The developer shall prepare a Maintenance Agreement for storm water BMP's constructed as part of this project. The Maintenance Agreement shall be reviewed and approved by the City prior to recordation with the Alameda County Recorder's Office. The Agreement shall be recorded to ensure that the responsibility for maintenance is bound to the property in perpetuity.
46. Mitigation Measure VIII-e: Proposed detention basins and project drainage system shall be designed in accordance with Alameda County Flood Control and Water Conservation District's standards, with such design to be supported via hydraulic calculations from the project engineer, to be reviewed and approved by the ACFCD and the City of Hayward Public Works Department. Any increased flow resulting from the proposed development would be required to be mitigated on-site.
47. The project streets, driveways and parking areas shall be designed to facilitate street sweeping, including the layout of the tree and handicap ramp bulb outs.
48. The project plan measures shall also include erosion control measures to prevent soil, dirt, debris and contaminated materials from entering the storm drain system, in accordance with the regulations outlined in the ABAG Erosion and Sediment Control Handbook.
49. The developer is responsible for ensuring that all contractors are aware of all storm water quality measures and implement such measures. Failure to comply with the approved construction BMPs will result in the issuance of correction notices, citations or a project stop work order.
50. The project shall not block runoff from, or augment runoff to, adjacent properties. The drainage area map developed for the hydrology design shall clearly indicate all the areas tributary to the project area. The developer is required to mitigate augmented runoffs with off-site and/or on-site improvements.
51. All storm drain inlets must be labeled "No Dumping - Drains to Bay" using City approved methods.
52. Storm water inlets shall be installed at the curb face per the City of Hayward Standard Details. The design and location shall be approved by the City Engineer.

#### **Sanitary Sewer System**

53. Sanitary sewer service is available subject to standard conditions and fees in effect at the time of application.

54. The development will impact a section of sewer main on Tennyson Road, between the Tennyson Road lift station and I-880, which is currently undersized and has inadequate capacity. A hydraulic analysis must be performed to determine the developer's exact share of the cost to upgrade this line, but this share is currently estimated to be 5%, or \$275,000. The exact amount must be determined and paid prior to recordation of the first final map for the tract.
55. The developer must extend a sewer main along the Alquire Parkway extension/connector road and the along new Bodega Street extension from the connector road to the Browne property line (APN: 083-0265-002-24), to serve the existing residences along Bodega Street.
56. The on-site sanitary sewer system shall have 8-inch public mains, designed with a manhole at all angle points and ending with a manhole. Each parcel shall have a separate sanitary sewer lateral stubbed to the edge of the street right-of-way. The main design and location shall meet the approval of the City Engineer.

#### **Water System**

57. Water service is available from the City and is subject to standard conditions and fees in effect at the time of application.
58. The existing water system in the area is insufficient to provide adequate water service to this development. The developer must construct the necessary improvements, including a water reservoir, water main extensions, and pump station upgrades for the Garin Reservoir water system, to provide adequate service. The developer must obtain all necessary easements and right of ways, at no expense to the City, and dedicate these to the City prior to recordation of the first final map for the tract. The City must have access to water main extensions so access roads will need to be constructed as directed by the City Engineer.
59. All water main pipes crossing a fault shall be designed per City Standard Detail SD-227.
60. Provide a new water main along the Alquire Parkway extension/connector road and along the new Bodega Street extension from the connector road to the property line, to serve the existing residences along Bodega Street.
61. Water mains shall be a looped system to prevent water quality problems. The water main at the end of Court "C" shall be extended and connected to provide a looped system, utilizing easements if necessary.
62. Mortar Lined Welded Steel or Ductile Iron Pipe is required in all easements. Control valves are required in the street prior to easements.
63. The developer must connect the proposed water main in the Tennyson Road extension to the existing main in Mission Boulevard with pressure reducing valves.
64. The developer shall provide calculations showing that the proposed water mains are adequate to supply required fire flows.

65. Fire hydrants shall be provided throughout the development and along Tennyson Road and the Alquire Parkway extension/connector road. The locations shall be approved by the Fire Department prior to start of construction. Fire hydrant locations shall be identified with blue reflective pavement markers installed in the street adjacent to the fire hydrant.
66. Fire hydrants shall be double steamer type which shall be installed per City standards.
67. Fire flow requirements for this development shall be 3,000 gallons per minute at 20 psi. An allowance of up to 50 percent may be granted for fire sprinklers systems installed within each building.

#### **Utilities**

68. All utility services shall be "underground service" designed and installed in accordance with the Pacific Gas and Electric Company, SBC, Comcast and SBC Broadband Company regulations. Transformers, and switch gear cabinets, shall be placed underground unless otherwise approved by the Planning Director and the City Engineer. Underground utility plans must be submitted for City approval prior to installation.
69. The developer shall submit conceptual undergrounding plans with the Precise Plan submittal. Given the reduced setbacks of the homes to the back of sidewalk or curb, the joint trench will need to be located within the street to allow installation of required frontyard landscaping.
70. The developer shall provide and install the appropriate facilities, conduit, junction boxes, etc., to allow for installation of a fiber optic network within the subdivision.
71. All proposed surface-mounted hardware (fire hydrants, electroliers, etc.) along the proposed streets shall be located outside of the sidewalk within the proposed Public Utility Easement in accordance with the requirements of the City Engineer or, where applicable, the Fire Chief.
72. All utilities shall be designed in accordance with the requirements of the City of Hayward and applicable public agency standards.
73. Mitigation Measure VII-g: Recommendations of the project geotechnical engineer related to street and utility lines shall be incorporated into the project design. Such recommendations indicate that utility lines are to be placed east of the Hayward earthquake fault trace for the Alquire Parkway extension and that special design features, such as flexible pipes, shutoff valves on either side of the fault trace and use of an outer conduit, be incorporated where utility lines would cross the fault trace for the Tennyson Road extension. The design of water main pipes crossing the Hayward fault trace shall be consistent with the City's Standard Detail 227.

#### **Fire Protection**

74. Prior to issuance of a building permit for construction of a Community Center, building construction, fire protection access and available water supply shall be reviewed and approved by the Fire Department.

75. A Fuel Management Plan and Homeowners' Educational Addendum is required for the development. The Fuel Management Plan shall be prepared by a qualified consultant. A copy of the fuel management report shall be submitted to the Fire Department for review and approval, with provisions of the Fuel Management Plan to be integrated into project design.
76. The design and construction of the proposed development shall be in accordance with the City's Urban/Wildland Interface Guidelines, to include, but not be limited to
- a. Class A roofing materials;
  - b. Exterior non-combustible siding materials;
  - c. Spark arrestors on chimney caps;
  - d. Double paned windows;
  - e. Boxed eave construction;
  - f. Wire mesh vent screens;
  - g. Non-combustible perimeter fencing (unless approved by the Fire Department);
  - h. Heavy timber or non-combustible construction materials for exterior decking and balconies (that are attached to the structure), accessory structures such as gazebos, atriums, walkways for decks, etc. If combustible construction materials are proposed for any of the proposed mentioned accessory structures, automatic fire sprinklers shall be provided and installed where applicable.
77. Each single-family dwelling shall be equipped with an automatic fire sprinkler system, designed and installed per NFPA 13-D(Modified) Standards. The fire sprinkler protection shall be supplied from the domestic water line and independently controlled. Fire sprinkler protection shall be provided within all living areas, including fire sprinkler heads within attic and garage space, under crawl spaces and/or any attached decking or balconies constructed with combustible construction materials, with foyers and porches and other areas where access or storage concerns exist.
78. Each single-family dwelling unit shall have an interior alarm signaling device which will activate upon any sprinkler head activation.
79. Each single-family dwelling unit shall have an exterior alarm bell installed in on the fire sprinkler system riser in a location approved by the Fire Department.
80. Each fire sprinkler system shall be equipped with a spare sprinkler head box located at the riser.
81. The fire line service (connected to the domestic water line) shall be installed and arranged per NFPA 13-D Standards. A minimum 1 inch meter shall be required to support the domestic water fixtures and the fire sprinkler system. The control valve for the fire sprinkler system shall be locked with a chain and break-away type of lock if it is exposed (above grade)
82. Residential smoke detectors shall be installed per the California Building Code.

83. Addressing for each single family dwelling shall be assigned and approved by the Fire Department. Numbers shall be a minimum of 4 inches in height (self-illuminated) and be visible from the street.

#### **Grading and Retaining Walls**

84. A Geologic Hazard Abatement District (GHAD) shall be formed prior to issuance of the first 50 building permits for residential units. The developer shall either prepare all necessary reports, maps, and supporting documents, which will be reviewed by the City's consultants, or the City will have the necessary reports, maps and supporting documents prepared to form the district. In either case, the developer shall post a deposit with the City prior to the recordation of the first final map to cover the City's costs for formation of the district. The exact extent of the responsibilities of the district shall be determined during the preparation of the Precise Development Plan for the development; however, the majority of the land within the large eastern slope located within Parcel A as shown on the vesting tentative tract map shall be included within the GHAD.
85. All retaining walls shall be constructed with decorative reinforced concrete, or shall be keystone walls. The exposed face of any retaining wall shall not exceed 6 feet from ground to top of wall.
86. Retaining walls shall be setback a minimum of five feet from the back of sidewalk to allow for required landscaping. If trees are to be planted between the walls and the sidewalk, the setback shall be increased to provide sufficient room for the trees.
87. Footings for the retaining walls along the public streets shall be within the parcels owned by the HOA. Drainage shall discharge to the public streets and not onto the private lots.
88. The proposed retaining wall along the Alquire Parkway extension, adjacent to the Moita property, appears to have an exposed face greater than six feet. The grading in the area shall be revised, or an alternative type of retaining wall, or method of retaining this slope shall be proposed. The proposed solution must be approved by both the Planning Director and the City Engineer.

#### **Dedications, Easements and Deed Restrictions**

89. The proposed approximately 15.1-acre community park/detention basins site, shown as Parcel P on the vesting tentative tract map and the approximately 14.6-acre site shown as Parcel B on the vesting tentative tract map for development of a new community center or development of additional parkland/detention basins, shall be dedicated to the City.
90. The proposed reclaimed slope to the east located between the development and Garin Regional Park and contained within Parcel A as shown on the vesting tentative tract map, shall not be developed and shall remain as open space in perpetuity. Such development restrictions shall not apply to those improvements approved with this Planned Development.
91. The final map shall reflect:

- a. Six-foot-wide public utility easements (PUE) along the edge of the public/private streets where necessary as determined by the City Engineer.
- b. Dedication of all right-of-way and easements for the new water main extension, including access roads.
- c. Dedication of the right-of-way and easements for the extension of Tennyson Road.
- d. Dedication of right-of-way and easements for the realignment and extension of Alquire Parkway to its connection with "A" Street within the development.
- e. Dedication of right-of-way and easements for the new Bodega Street road connection/extension between Alquire Parkway and Bodega Street at the property line.
- f. Dedication of access roads to the Durazo, Tavake and Ersted parcels if within the boundaries of the development.
- g. Abandonment of the Alquire Parkway right-of-way under the existing roadway termination. The necessary utility easements shall be shown for the utilities which will remain in place.
- h. If drainage from the "two-pack" lots crosses property lines, the necessary drainage easements shall be provided.

### **Subdivision Agreement**

92. Execute a subdivision agreement and post bonds with the City that shall secure the construction of the public improvements per Section 10-3.332, Security for Installation of Improvements, of the Municipal Code. Insurance shall be provided per the terms of the subdivision agreement.

### **PRIOR TO ISSUANCE OF GRADING PERMITS**

93. Mitigation Measure XI-a: In accordance with Mission-Garin Annexation Project Program Environmental Impact Report (MG EIR) Mitigation Measure 4.9-1, a Construction Noise Management Plan shall be prepared and implemented. Such plan must be approved by the Hayward City Engineer prior to issuance of grading permits and shall contain, at minimum, a listing of hours of construction operations (which shall be in accordance with the City's construction hours), use of mufflers on construction equipment, limitation of on-site speed limits, identification of haul routes to minimize travel through residential areas and identification of noise monitors. Specific noise management measures shall be included in appropriate contractor specifications.
94. Mitigation Measure III-b: Prior to the start of any construction or grading activity, including hauling of material to the project site, an asbestos dust mitigation plan approved by the Bay Area Air Quality Management District (BAAQMD) shall be implemented throughout the duration of construction or grading activity. In accordance with the State's "Asbestos Airborne Toxic Control Measure for Construction, Grading, Quarrying, and Surface Mining Operations" (CCR Title 17, Division 3, Chapter 1, Subchapter 7.5, Sections 93105 et seq.), the dust mitigation plan must specify dust mitigation practices which are sufficient to ensure that no equipment or operation emits dust that is visible crossing the property line, and must include one or more provisions addressing each of the following topics:
  - a. Track-out prevention and control measures.
  - b. Keeping active storage piles adequately wetted or covered with tarps.

- c. Control for disturbed surface areas and storage piles that will remain inactive for more than seven (7) days
- d. Control for traffic traveling on project site unpaved roads, parking lots and staging areas.
- e. Control for earth moving activities.
- f. Control for off-site transport.
- g. Post construction stabilization of disturbed areas.
- h. Air-monitoring for asbestos (if required by the BAAQMD's Air Pollution Control Officer).
- i. Frequency of reporting.

95. Mitigation Measure IV-a: In accordance with Mitigation Measures 4.3-5 through 4.3-6 of the Mission-Garin Annexation EIR, prior to the start of grading or construction, the U.S. Fish and Wildlife Service (USFWS) shall confirm all habitat assessments conducted by Wetland Research Associates for California red-legged frog and Alameda whipsnake. If California red-legged frogs or Alameda whipsnakes and/or their occupied habitats are determined to be present based on results of habitat assessments or protocol-level surveys, then a project specific California red-legged frog and/or Alameda whipsnake mitigation plan should be developed, approved by the USFWS and CDFG prior to development, and implemented. In accordance with Mitigation Measures 4.3-7 through 4.3-8 of the Mission-Garin Annexation EIR, prior to the start of grading or construction, surveys utilizing protocols acceptable to the resource agencies, including burrowing owl survey protocol and protocol for Golden Eagle surveys established by the California Department of Fish and Game (CDFG), shall be conducted. If such surveys reveal the presence of nesting Golden Eagles within 0.25 mile and in direct line-of-sight distance from project activity, presence of Western burrowing owls within 250 feet, presence of loggerhead shrikes within 200 feet or presence of any other special-status raptors within 300 feet of project activity, construction activity within the above-specified buffer zones shall be completed before the nesting season or be postponed until after the nesting season (March through the end of August). The limit related to presence of Golden Eagles shall be applicable during the entire tenure eagles are actively nesting within the buffer zone, not just during the typical breeding season. Also, given suitable on-site habitat exists for loggerhead shrike and a nesting pair of red-tailed hawks was observed on site, further raptor and shrike and Golden Eagle surveys following survey protocols established by resource agencies shall be conducted during the nesting season immediately preceding start of grading or construction, to confirm no active raptor nests exist that could be impacted by construction activities.

96. Mitigation Measure IV-c: Prior to the issuance of permits for grading or construction for portions of the proposed Tennyson Road extension that involve areas where potential wetlands have been identified, formal jurisdictional wetland delineation/verification shall be secured from the US Army Corps of Engineers. If such delineation indicates a wetland exists which would be unavoidable and impacted by the proposed Tennyson Road extension or any other portion of the project, a permit/approval from the Corps shall be obtained and a wetland mitigation plan utilizing the standard minimum replacement ratio of 1:1 shall be developed and implemented prior to the start of grading and construction. Such mitigation plan shall be approved by the US Army Corps of Engineers, the California Department of Fish and Game and the California Regional Water Quality Control Board.

97. Mitigation Measure VI-aii: As recommended by the City's geotechnical peer-reviewer, prior to issuance of construction permits, the project geotechnical consultant shall review the final construction plans to ensure that site grading, fault and slope setbacks, foundation designs, subdrainage, etc. are in accordance with the project consultant's recommendations, and provide a plan review letter to the City. Also, the project certified engineering geologist and geotechnical engineer shall be on site during grading, excavations, keyways, cuts, etc. to verify that actual geologic conditions, fault locations and special foundation zones are as anticipated and that appropriate supplemental recommendation be provided, as necessary. The results of such inspections, testing, and/or modifications shall be documented in an "as-built" letter/report prepared by the project engineering geologist/geotechnical engineer and submitted to the City before final approval of permits is granted.
98. Mitigation Measure VII-b(2): In accordance with Mitigation Measure 4.6-1(a) of the MG EIR, prior to start of project grading, project developers shall contact the Alameda County Environmental Health Department, Bay Area Air Quality Management District, State Department of Toxic Substances Control and the Hazardous Materials Division of the Hayward Fire Department, for required site clearances, necessary permit and facility closure with regard to demolition and removal of hazardous material from the site. All work shall be performed by licensed contractors in accordance with state and federal OSHA standards. Worker safety plans shall be included for all demolition plans. Additionally, a Phase I Preliminary Site Assessment (PSA) shall be conducted to assess conditions and activities at the site in association with a surface mining operation that could represent the potential presence of hazardous materials. Also, if justified by the PSA, additional studies, including possibly a Phase II soil and groundwater quality investigation shall be conducted, with remedial measures identified in such investigation to be implemented in accordance with standard practices.
99. Prior to the issuance of a grading permit, the developer shall provide a tree preservation bond, surety or deposit, equal in value to the trees to be preserved on the site that are within 50 feet of any grading or construction. The bond, surety or deposit shall be returned when the tract is accepted if the trees are found to be in a healthy, thriving and undamaged condition, as determined by the City's Arborist.
100. Trees shall be preserved in accordance with the Tree Preservation Ordinance. Prior to the issuance of a grading or building permit, all trees to be preserved or removed shall be indicated on the grading, site and landscape plans, and trees to remain in place shall be noted and provided with tree protection measures in compliance with City codes and per tree preservation guidelines, including installation of tree protection fencing prior to the start of grading, as recommended by the project consulting arborist, Ed Brennan of HortScience, Inc. A tree removal permit is required prior to the removal of any tree. Replacement trees shall be required for any trees removed, as determined by the City Landscape Architect.

#### **PRIOR TO ISSUANCE OF BUILDING PERMITS**

101. The La Vista Quarry shall cease operations no later than substantial completion of rough grading, and no further surface mining/batch plant activity shall occur on the site. Reclamation in accordance with the approved reclamation plan and as approved by the

Surface Mining and Reclamation Act (SMARA) lead agency and the State Office of Mine Reclamation shall be completed prior to issuance of building permits for the proposed homes.

102. Mitigation Measure VI-ai: No habitable structures, including a possible community center, shall be built closer than 50 feet of the active Hayward fault trace and concentrated fault zone, as indicated on the submitted plans. Additionally, special foundation designs shall be incorporated into homes proposed to be built within the identified special foundation zone at the southeast corner of the proposed development. The design of such foundations and location of homes and possible community center shall be in accordance with the recommendations of the project geotechnical consultant, to be confirmed via plan review and “as-built” letters from the project geotechnical consultant, to be submitted prior to issuance of building permits and prior to project finalization, respectively.
103. Prior to the approval of improvement plans or issuance of the first building permit, detailed landscaping and irrigation plans for all common areas shall be prepared by a licensed landscape architect and submitted for review and approval by the City. Because of hillside issues and screening requirements, landscape and irrigation plans will be required for each individual unit. Landscaping and irrigation plans shall comply with the City’s Water Efficient Landscape Ordinance.

#### **PRIOR TO CONSTRUCTION WITH COMBUSTIBLE MATERIALS**

104. Required water system improvements shall be completed and operational prior to the start of combustible construction to the satisfaction of the Fire Chief.
105. A minimum 24-foot-wide all-weather access road, engineered for 50,000 pounds gross vehicle weight, shall be maintained for emergency vehicle access.
106. Prior to start of construction involving combustible materials, or as required by the Hayward Fire Department, an additional water tank equal in size to the existing water tank, shall be constructed at the Garin Reservoir Site to the south of the project, and improved with a water system acceptable to the Hayward Fire and Public Works Departments that would bring adequate water supply and pressure to the project site. The construction of the required new water tank may be delayed until completion of tract improvements, if it can be demonstrated to the satisfaction of the City Fire Chief and Public Works Director that connection to the existing water tank at the Garin Reservoir site would be adequate to provide for sufficient fire-fighting capabilities.

Also, prior to the start of construction involving combustible materials, roadways acceptable to the Hayward Fire Department shall be constructed, to provide emergency vehicle access to the project site. Also, a fuel management plan, acceptable to the Hayward Fire Department, shall be implemented throughout construction and incorporated into the design of homes and structures. (MG EIR Mitigation Measure VII-h)

107. Mitigation Measure I-c: In accordance with Mitigation Measure 4.1-1 of the Mission-Garin Annexation Program Project Environmental Impact Report (MG EIR), the additional water tank will be required to be painted neutral, earth-tone colors to blend in with the natural

environment and screened with trees and shrubs, in accordance with the City's Hillside Design Guidelines.

### **DURING CONSTRUCTION**

108. Mitigation Measure III-c: In accordance with MG EIR Mitigation Measure 4.2-1, grading activities shall incorporate standard dust control measures, to include, but not be limited to frequent watering of the site, use of soil stabilizers, hydroseeding of graded areas and other measures that comply with Bay Area Air Quality Management District recommendations for dust control. Project construction grading plans shall state such measures on the plans, to be approved by the Hayward Public Works Department staff.
109. Mitigation Measure I-c: Any tree removals shall be replaced with new trees equal in size and species or value, in accordance with the City's Tree Preservation Ordinance, to be approved by the City Landscape Architect.
110. Mitigation Measure IV-e: In accordance with Hayward's Tree Preservation Ordinance, any "protected" trees as defined by the City's Tree Preservation Ordinance that are to be removed as a result of the project shall be replaced with like-size, like-kind trees or trees equal in value to them, as determined by the City's Landscape Architect.
111. The following control measures for construction noise, grading and construction activities shall be adhered to, unless otherwise approved by the Planning Director or City Engineer:
  - a. Grading and construction activities shall be limited to the hours 7:00 AM to 6:00 PM on weekdays and Saturdays; there shall be no grading or construction activities on Sundays or holidays;
  - b. Grading and construction equipment shall be properly muffled;
  - c. Unnecessary idling of grading and construction equipment is prohibited;
  - d. Stationary noise-generating construction equipment, such as compressors, shall be located as far as practical from occupied residential housing units;
  - e. Applicant/developer shall designate a "noise disturbance coordinator" who will be responsible for responding to any local complaints about construction noise. Letters shall be mailed to surrounding property owners and residents within 300 feet of the project boundary with this information, including the residents/owners at properties along the eastern portions of Overhill Drive.
  - f. The developer shall post the property with signs that shall indicate the names and phone number of individuals who may be contacted, including those of staff at the Bay Area Air Quality Management District, when occupants of adjacent residences find that construction is creating excessive dust or odors, or is otherwise objectionable. Letters shall also be mailed to surrounding property owners and residents with this information prior to commencement of construction.
  - g. The developer shall participate in the City's recycling program during construction;
  - h. Daily clean-up of trash and debris shall occur on Alquire Parkway and Tennyson Road extension and other neighborhood streets utilized by construction equipment or vehicles making deliveries.
  - i. The site shall be watered twice daily during site grading and earth removal work, or at other times as may be needed to control dust emissions;

- j. All grading and earth removal work shall follow remediation plan requirements, if soil contamination is found to exist on the site;
  - k. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;
  - l. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;
  - m. Apply (non-toxic) soil stabilizers or hydroseed to inactive construction areas (previously graded areas inactive for 10-days or more);
  - n. Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles (dirt, sand, etc.).
  - o. Gather all construction debris on a regular basis and place them in a dumpster or other container which is emptied or removed on a weekly basis. When appropriate, use tarps on the ground to collect fallen debris or splatters that could contribute to storm water pollution;
  - p. Remove all dirt, gravel, rubbish, refuse and green waste from the sidewalk, street pavement, and storm drain system adjoining the project site. During wet weather, avoid driving vehicles off paved areas and other outdoor work;
  - q. Broom sweep the sidewalk and public street pavement adjoining the project site on a daily basis. Caked on mud or dirt shall be scraped from these areas before sweeping;
  - r. No site grading shall occur during the rainy season, between October 15 and April 15, unless approved erosion control measures are in place.
  - s. Install filter materials (such as sandbags, filter fabric, etc.) at the storm drain inlet nearest the downstream side of the project site prior to: 1) start of the rainy season; 2) site dewatering activities; or 3) street washing activities; and 4) saw cutting asphalt or concrete, or in order to retain any debris or dirt flowing into the City storm drain system. Filter materials shall be maintained and/or replaced as necessary to ensure effectiveness and prevent street flooding. Dispose of filter particles in the trash;
  - t. Create a contained and covered area on the site for the storage of bags of cement, paints, flammables, oils, fertilizers, pesticides or any other materials used on the project site that have the potential for being discharged to the storm drain system through being windblown or in the event of a material spill;
  - u. Never clean machinery, tools, brushes, etc., or rinse containers into a street, gutter, storm drain or stream. See "Building Maintenance/Remodeling" flyer for more information;
  - v. Ensure that concrete/gunite supply trucks or concrete/plasters finishing operations do not discharge washwater into street gutters or drains; and
  - w. The applicant/developer shall immediately report any soil or water contamination noticed during construction to the City Fire Department Hazardous Materials Division, the Alameda County Department of Health and the Regional Water Quality Control Board.
112. A representative of the soils engineer shall be on the site during grading operations and shall perform such testing as deemed necessary by the City Engineer. The representative of the soils engineer shall observe grading operations with recommended corrective measures given to the contractor and the City Engineer.

113. The minimum soils sampling and testing frequency shall conform to Chapter 8 of the Caltrans Construction Manual. The subdivider shall require the soils engineer to daily submit all testing and sampling and reports to the City Engineer.
114. The developer shall be responsible to adhere to all aspects of the Storm Water Pollution Prevention Plan (SWPPP) as approved per conditions of approval above.
115. Mitigation Measure VI-b: All exposed areas within the proposed project limits of grading are to be planted with vegetation, to the satisfaction of the City's Landscape Architect or, if temporary stockpiles of material are created on-site, covered with material to prevent material from being washed away.
116. Construction Administration services shall be provided by the project landscape architect. Services to include:
- a. Observation of irrigation system before burying pipes;
  - b. Observation of plant material upon delivery to the site;
  - c. Observation of layout and placement of plant material upon delivery to the site;
  - d. Observation for maintenance period commencement; and
  - e. Observation for final acceptance.
117. Mitigation Measure VII-b (1): No asbestos-containing material shall be placed within 10 feet of the finished grade surface within the proposed development, including all residential lots, streets and roads, outdoor open space areas and trails within and immediately adjacent to the development, and in the proposed community center and park areas and roads leading to the development (not intended to apply to reclaimed eastern hillside above development). Additionally, material to be used for the upper area "cap" shall be tested in accordance with a State-approved testing method, such as the Air Resources Board's Test Method 435, to confirm such material does not contain more than 0.25 percent asbestos material.

**PRIOR TO CONNECTION OF UTILITIES AND ISSUANCE OF CERTIFICATES OF OCCUPANCY**

118. The final map shall be filed and approved by the City and recorded in the County Records Office prior to the issuance of a Certificate of Occupancy of any unit.
119. Prior to project completion or occupancy of any residential unit, the existing La Vista Quarry access road shall be removed and revegetated to the satisfaction of the City Landscape Architect and the existing traffic signal at Mission Boulevard serving the quarry access road shall be removed at the owner's expense, to the satisfaction of the City Engineer.
120. The developer shall pay all required fees, including those indicated below, with the amount of such fees to be in accordance with the fee schedule in effect at the time of issuance of the building permits;
- a. Supplemental Building Construction and Improvement Tax;
  - b. Building Construction and Improvement Tax;
  - c. School Impact Fee (payable upon issuance of building permits); and
  - d. Water facilities Fee (payable upon issuance of building permits).

- e. Sewer Connection Fee for each dwelling unit at the rate in effect when the utility service permit for the dwelling unit is issued.
  - f. Park dedication in-lieu fees for each dwelling unit shall be calculated at the rate in effect when the building permit for unit is issued, to be applied to improvements associated with the development of the community park.
  - g. Annexation fee for unincorporated areas (prior to recordation of first final map).
121. Any damaged curb, gutter and/or sidewalk along the Tennyson Road and Alquire Parkway property frontages shall be repaired or replaced to the satisfaction of the City Engineer.
122. All common area landscaping, irrigation and other required improvements in the current phase shall be installed according to the approved plans.
123. The on-site street light electroliers shall be in operating condition as approved by the Planning Director and the City Engineer.

**PRIOR TO CITY APPROVAL OF THE TRACT IMPROVEMENTS AS BEING COMPLETED**

124. All tract improvements, including the complete installation of all improvements relative to streets, fencing, sanitary sewer, storm drainage, water system, underground utilities, etc., shall be completed and attested to by the City Engineer before approval of occupancy of any unit. Where facilities of other agencies are involved, such installation shall be verified as having been completed and accepted by those agencies.
125. The developer shall submit a final statement of water main extension costs and notarized bill of sale to the Utilities Administration prior to application for water service.
126. All common area landscaping, irrigation and other required improvements shall be installed prior to acceptance of tract improvements, or occupancy of 80% of the dwelling units, whichever first occurs. All individual lot landscaping shall be installed prior to occupancy of each unit and prior to the final acceptance of tract improvements.
127. An AC overlay along Alquire Parkway may be required by the City Engineer, if it is determined that it is necessary due to deterioration resulting from heavy traffic during the construction of the La Vista development. The developer proposes not to use Alquire Parkway for access during project development.
128. The improvements associated with the Pacific Gas and Electric Company, EBMUD, Comcast and SBC shall be installed to the satisfaction of the respective companies.
129. Landscape improvements and street trees shall be installed according to the approved plans and a Certificate of Substantial Completion, and an Irrigation Schedule shall be submitted prior to the issuance of a Certificate of Occupancy for each unit.
130. The subdivider shall submit an "as built" plan indicating the following:

- a. All the underground facilities, sanitary sewer mains and laterals, water services (including meter locations), Pacific Gas and Electric Company, EBMUD, SBC and Comcast, etc; and
- b. All the site improvements, except landscaping species, buildings and appurtenant structures.

#### Homeowners Association

131. Prior to the sale of any parcel, or prior to the acceptance of site improvements, whichever first occurs, a homeowners' association shall be created to maintain the common area landscaping and open space amenities as depicted on the approved vesting tentative tract map. The exact limits of responsibility for the Association will be determined during processing of the Precise Development Plan for the development.

132. Prior to the sale of any parcel, or prior to the acceptance of site improvements, whichever first occurs, Covenants, Conditions and Restrictions (CC&R's) shall be prepared for the project which shall be reviewed and approved by the Planning Director and City Attorney that shall include the following provisions:

- a. Each owner shall automatically become a member of the association and shall be subject to a proportionate share of maintenance expenses.
- b. A reserve fund shall be maintained to cover the costs of improvements and landscaping to be maintained by the Association.
- c. The association shall be managed and maintained by a professional property management company.
- d. The homeowners' association shall maintain the common area irrigation system and maintain the common area landscaping in a healthy, weed-free condition at all times. The homeowner's association representative shall inspect the landscaping on a monthly basis and any dead or dying plants (plants that exhibit over 30% die-back) shall be replaced within 14 days of the inspection. Trees shall not be severely pruned, topped or pollarded. Any trees that are pruned in this manner shall be replaced with a tree species and size determined by the City Landscape Architect, within the timeframe established by the City and pursuant to the Hayward Municipal Code.
- e. Individual property owners are responsible for properly maintaining the front yard landscaping, slope landscaping, and street trees associated with his/her property in a healthy, weed-free condition at all times, with irrigation systems to also be adequately maintained, and to replace any dead or dying plant material (over 30% of the plant dead) within 15 days of first notification. Slope landscaping includes that located in the rear portions of lots 14 through 32, 74 through 84, 113 through 129, 147 through 163 and 172 through 174. The homeowner's association representative shall inspect such areas on a monthly basis. The association maintenance representative shall have the right to enter such areas and charge related maintenance expenses to the individual homeowner, if the homeowner does not adequately maintain such areas within 14 days of written notification to do so.
- f. A provision that if the homeowners' association fails to maintain the landscaping and irrigation in all common areas for which it is responsible so that owners, their families, tenants, or adjacent owners will be impacted in the enjoyment, use or property value of the project, the City shall have the right to enter upon the project and to commence and complete such work as is necessary to maintain the common areas and private streets,

- after reasonable notice, and lien the properties for their proportionate share of the costs, in accordance with Section 10-3.385 of the Hayward Subdivision Ordinance.
- g. Views towards the bays shall be preserved by restricting the height of plant materials in the side and rear yards, with the exception of the required street trees, to no more than five feet above the highest grade. Solid hedges or fences that do not allow neighboring views through to the Bay shall not be allowed within the side or rear yards.
  - h. A requirement that the building exteriors and fences shall be maintained free of graffiti. The owner's representative shall inspect the premises on a weekly basis and any graffiti shall be removed within 72 hours of inspection or within 72 hours of notification by the City.
  - i. A tree removal permit is required prior to the removal of any protected tree, in accordance with the City's Tree Preservation Ordinance.
  - j. The garage of each unit shall be maintained for off-street parking of two vehicles and shall not be converted to living or storage areas. An automatic garage door opening mechanism shall be provided for all garage doors.
  - k. No hot tubs, spas or swimming pools area allowed, unless adequately screened and located in rear yards at least five feet from any building and at least three feet (five feet for pools) from any property line or easements established for the benefit of adjacent properties.
  - l. Individual homeowners shall maintain in good repair the exterior elevations of their dwelling. The CC&Rs shall include provisions as to a reasonable time period that a unit shall be repainted, the limitations of work (modifications) allowed on the exterior of the building, the formation of a design review committee and its power to review changes proposed on a building exterior and its color scheme, and the right of the homeowners association to have necessary work done and to place a lien upon the property if maintenance and repair of the unit is not executed within a specified time frame. The premises shall be kept clean and free of debris at all times. Color change selections shall be compatible with the existing setting.
  - m. Utility meters, when not enclosed in a cabinet, shall be screened by either plant materials or decorative screen, allowing sufficient access for reading.
  - n. Any transformer shall be located underground and shall be located outside any front or side street yard.
  - o. Any future major modification to the approved site plan shall require review and approval by the Planning Commission.
  - p. The CC&Rs shall specify the outdoor collection locations of trash and recycle containers. In addition, trash and recycle containers shall not be moved to the collection location more than 24 hours prior to collection and shall be removed within 24 hours after collection.
  - q. Upon any necessary repairs to the facilities under the on-site decorative paved areas, the City shall not be responsible for the replacement cost of the decorative paving. The replacement cost shall be borne by the homeowners association established to maintain the common areas within the subdivision boundary.
  - r. Streetlights and pedestrian lighting shall be owned and maintained by the homeowners association and shall have a decorative design approved by the Planning Director and the City Engineer.