

HAYWARD CITY COUNCIL

RESOLUTION NO. 16-

Introduced by Council Member _____

RESOLUTION AUTHORIZING AMENDMENTS TO THE LA VISTA
PROJECT DEVELOPMENT AGREEMENT

WHEREAS, La Vista L.P. has requested a five-year extension of the La Vista Project Development Agreement (the "Development Agreement") and revisions to the associated schedule (the Amendment to the Development Agreement) for the project now known as La Vista Development (the "Project"); and

WHEREAS, the Development Agreement provides that the term of the agreement may be extended for an additional five years upon written agreement of the parties, and the delays in the construction of the Project creating the need for the extension were caused by national and regional economic conditions related to the housing market and use of the La Vista project site for temporary soil storage from the 2007 Garin Vista project site landslide to the south; and

WHEREAS, the City Council adopted a Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project on July 19, 2005, in conjunction with approval of the General Plan Amendment, Zone Change, Vesting Tentative Map and Development Agreement for the Project; and

WHEREAS, there has been no substantial change proposed in the Project or the circumstances under which the Project is being undertaken, nor is there any new information that would require additional environmental review; and

WHEREAS, on February 11, 2016, the Planning Commission found that the requested Amendment to the Development Agreement are consistent with the General Plan and recommended approval of the Amendment to the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby approves an Amendment to Sections 1.2.10, 1.2.25 and 7 of the Development Agreement, the full revised version of which is attached hereto as Exhibit A, subject to the adoption of the companion ordinance.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2016

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

Exhibit A

RECORDING REQUESTED BY
CITY OF HAYWARD
AND WHEN RECORDED MAIL TO:

┌ City Clerk ───────────────────┐

City of Hayward

└ 777 "R" Street ─────────────────┘

SPACE ABOVE THIS LINE FOR RECORDER'S USE

The undersigned grantor hereby declares: This instrument exempt from Recording Fees (Govt. Code §27383)
and from
Documentary Transfer Tax (Rev. and Taxation Code § 11922).

REVISED DEVELOPMENT AGREEMENT

BETWEEN
THE 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)

REVISED 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 REVISED AGREEMENT (“Agreement”) is entered into this _____ day of _____, _____, (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. _____ on _____, _____, 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 the OWNER and CITY have executed the Agreement.

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 and Final Maps | June 2015 |
| Finish Reclamation/Mass Grading | October 2015 |
| Start Subdivision Improvements | April 2016 |
| Start Homes | October 2016 |

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 Number 083-0125-001-17)

4.9.3 Zaballos Parcel U (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 (15) years until May 26, 2021. 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: Frances David, City Manager
City of Hayward
777 "B" Street
Hayward, CA 94541-5007

With a copy to: Michael Lawson, 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 94588

With a copy to: Michael Willcoxon, Esq.
11555 Dublin Blvd.
Dublin, CA 94588

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

Its: _____

CITY: CITY OF HAYWARD

By: _____
Frances David

Its: City Manager _____

APPROVED AS TO FORM:

By: _____
Michael Lawson

Its: City Attorney _____

- 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

LEGAL DESCRIPTION OF LA VISTA PROJECT SITE

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

LIST OF CURRENT DEVELOPMENT APPROVALS

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

CONDITIONS OF APPROVAL