

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
BURLINGAME APPROVING A DEVELOPMENT AGREEMENT WITH
350 BEACH ROAD LLC FOR THE DEVELOPMENT OF BURLINGAME
POINT ON 18.13 ACRES AT 300 AIRPORT BOULEVARD

WHEREAS, on April 15, 2010, 350 Beach Road LLC submitted an application requesting development approvals for a commercial office campus comprised of four office buildings (one eight-story, one-seven story, two five-story buildings, a five and one-half level parking structure and an amenities building) totaling 767,000 square feet, on an 18.13 acre site located at 300 Airport Boulevard (the "Project" herein); and

WHEREAS, the requested approvals include a request for an amendment to the Bayfront Specific Plan to increase the allowable floor area ratio from 0.60 FAR to 1.0 FAR, an amendment to the zoning ordinance to rezone a small portion of the site from APS to APN, an amendment to the zoning ordinance and to the sign ordinance to change development standards, a Vesting Tentative Parcel Map, a Conditional Use Permit for Day Care use, Commercial Design Review, and an ordinance approving a Development Agreement, which would collectively authorize the phased development of the four office buildings, an amenities building, a parking structure, bayfront trail improvements and the rerouting of Airport Boulevard through the Project, subject to the terms of the Development Agreement ("Agreement") (all, together, the Project"); and

WHEREAS, the applicant has requested approval of a Development Agreement which would clarify and obligate several project features, public benefits and improvements and mitigation measures; and

WHEREAS, a Final Environmental Impact Report (FEIR) has been prepared and certified as completed in accordance with the California Environmental Quality Act (CEQA), as reflecting the independent judgment and analysis of the City and CEQA findings have been adopted as required, all as more particularly set forth in City Council Resolution No. _____ adopted prior to this Ordinance, which evaluates, among other things, the significant and potentially significant impacts of the development, the cumulative impacts of the development, the alternatives to the proposed Project and the significant and unavoidable impacts and includes a Statement of Overriding Considerations setting forth, on balance, how the benefits of

the Project outweigh the significant unavoidable impacts; and

WHEREAS, the Director of Community Development reviewed the Development Agreement and found the proposed Agreement to be in the proper form and referred it and the entire Project application to the Planning Commission for a public hearing; and,

WHEREAS, following a properly noticed public hearing held on May 14, 2012, the Planning Commission unanimously adopted a Resolution recommending to the City Council that it take action to certify the FEIR, adopt the CEQA Finding, adopt the changes to the Bayfront Specific Plan and the zoning ordinance amendments, approve the other Project entitlements including the Development Agreement; and

WHEREAS, on June 4, 2012, the City Council at a noticed regular City Council meeting, introduced two ordinances to amend the zoning ordinance and rezone a portion of the site consistent with the Planning Commission's recommendation of approval of the Project and an ordinance to approve the Development Agreement and set a public hearing for June 18, 2012 regarding the ordinances, the Project FEIR, the Project entitlements, the Development Agreement and all other matters related to the Project; and

WHEREAS, on June 18, 2012, the City Council conducted a properly noticed public hearing regarding the Project, the zoning ordinance revisions, the rezoning, the amendment to the Bayfront Specific Plan, the entitlements and the proposed Development Agreement for the Project.

NOW THEREFORE, the City Council of the City of Burlingame does hereby Ordain as follows:

SECTION 1. FINDINGS.

Based on the entirety of the record before it, which includes without limitation, the California Environmental Quality Act; Public Resources Code §21000, et seq.; ("CEQA") and the CEQA Guidelines; 14 California Code of Regulations§ 15000, et seq.; the Burlingame General Plan and the Burlingame Bayfront Specific Plan; the Burlingame Municipal Code; the Project applications; the Burlingame Point development plan; the EIR, including the Draft EIR and the Comments and Responses thereto (together the Final EIR or FEIR) prepared for the Burlingame Point Project and appendices thereto as prepared by Atkins Environmental; all site plans; and all reports, minutes, and public testimony submitted as part of the Planning Commission's duly noticed

meetings and hearings on January 9, 2012, and May 14, 2012 and the City Council meeting of June 4, 2012; and all site plans, reports, and public testimony submitted as part of the City Council's duly noticed meeting of June 18, 2012; and any other evidence (within the meaning of Public Resources Code §21080(e) and §21082.2), the City of Burlingame City Council hereby finds as follows:

1. It has reviewed and considered the FEIR and hereby incorporates by reference the provisions of Resolution No. _____ certifying the FEIR and adopting findings.

2. The proposed Development Agreement for the Project is consistent with the objectives, policies, general land uses and programs specified in the General Plan and the Bayfront Specific Plan, as amended and adopted. This finding is based upon all evidence in the record as a whole, including, but not limited to, the City Council's independent review of these documents. The Project Plan provides for the phased development of two five-story office buildings, one seven-story office building, one eight-story office building, an amenities building (day care, fitness, pool and food service), a five and one-half level parking structure, a pedestrian bridge over Sanchez Channel, realignment of Airport Boulevard and bay trail improvements on the 18.13 acre project site. Based upon its review of the record, the Council finds that the proposed Project complies with all zoning, subdivision and building regulations, as amended, and with the objectives, policies, general land uses and programs specified in the City's General Plan and the Bayfront Specific Area Plan, as amended.

3. The City Council has independently reviewed the proposed Development Agreement, the General Plan, the Bayfront Specific Plan as amended, the Zoning Ordinance as amended the Municipal Code, and applicable state and federal law, including California Government Code section 65864, *et seq.*, and has determined that the proposed Development Agreement for the Project complies with all applicable zoning, subdivision, and building regulations, as amended and with the General Plan and the Bayfront Specific Area Plan, as amended. The Project and the Development Agreement further a number of policies articulated in these plans by facilitating the long-term phased development of a campus-like development, capable of accommodating work space for high-tech and/or life-science companies that will strengthen the City's economic and employment base. The development contemplated in the Project applications and supporting materials and Development Agreement are consistent with the zoning and Specific Plan standards as modified. This finding is based upon all evidence in the record as a whole, including, but not limited to: the City Council's independent review of these documents, oral and written evidence submitted at the public hearings on the Project, including advice and recommendations from City staff.

4. The proposed Development Agreement for the Project states its specific duration. This finding is based upon all evidence in the record as a whole, including, but not limited to: the City Council's independent review of the proposed Development

Agreement and its determination that Section 2.2 of the Agreement states that the Agreement shall expire ten (10) years from the Effective Date of the Agreement, which shall be thirty (30) days after the adoption of the instant ordinance.

5. The proposed Development Agreement incorporates the permitted uses, density and intensity of use for the property subject thereto, as reflected in the approved Bayfront Specific Plan Amendment, the Zoning Ordinance amendments and rezoning, the entitlements, the Environmental Impact Report, the Transportation Demand Management Plan and the Development Agreement. This finding is based upon all evidence in the record as a whole, including, but not limited to: the City Council's independent review of the proposed Development Agreement and its determination that Article 3 of the Agreement sets forth the development standards and incorporates the documents and related conditions constituting the Project.

6. The proposed Development Agreement states the maximum permitted height and size of proposed buildings on the property subject thereto. This finding is based upon all evidence in the record as a whole, including, but not limited to: the City Council's independent review of the proposed Development Agreement and its determination that Article 3 of the Agreement sets forth the documents which state the maximum permitted height and size of the Project buildings.

SECTION 2. APPROVAL OF DEVELOPMENT AGREEMENT.

The City Council of the City of Burlingame hereby approves the proposed Development Agreement with 350 Beach Road LLC, attached hereto as Exhibit "A" and incorporated herein by reference.

SECTION 3. SEVERABILITY.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, the remainder of this Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Burlingame hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 4. PUBLICATION AND EFFECTIVE DATE.

Pursuant to the provisions of Government Code Section 36933, a summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk's Office a copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting. This ordinance shall become effective thirty (30) days after its adoption.

Jerry Deal, Mayor

I, Mary Ellen Kearney, City Clerk of the City of Burlingame, do hereby certify that the foregoing ordinance was introduced at a regular meeting of the City Council held on the 4th day of June, 2012, and adopted thereafter at a regular meeting of the City Council held on the 18th day of June, 2012, by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:

Mary Ellen Kearney, City Clerk

DRAFT as of 06/12/12

RECORDING REQUESTED BY
AND WHEN RECORDED, RETURN TO:
City of Burlingame
Department of Community Development
501 Primrose Road
Burlingame, CA 94010
Attn: Director of Community Development

[To Be Recorded Without Fee Pursuant to Government Code §6103 and 27383]

DEVELOPMENT AGREEMENT

BETWEEN

CITY OF BURLINGAME

AND

350 BEACH ROAD, LLC

Dated: _____, 2012

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	2
ARTICLE II TERM.....	6
2.1 Commencement; Recordation.....	6
2.2 Expiration of Term.....	6
2.3 Early Termination	6
ARTICLE III DEVELOPMENT OF THE PROPERTY.....	6
3.1 Project Development; Permitted Uses; Control of Development.....	6
3.2 Subsequent Approvals	7
3.3 Regulations for Health and Safety	7
3.4 Construction Codes and Standards	7
3.5 Timing of Development of Project	7
ARTICLE IV OBLIGATIONS OF THE PARTIES	8
4.1 Developer's Obligations.....	8
4.2 Condition to Developer's Obligations.....	10
4.3 City's Obligations.....	10
4.4 Tentative Map; Expiration.	12
4.5 Acceptance of Dedications.	12
ARTICLE V INDEMNITY	13
5.1 Developer's Indemnity	13
5.2 Legal Challenge; Cooperation	13
5.3 Attorney's Fees and Costs	13
5.4 Notice	13
5.5 No Personal Liability	13
ARTICLE VI ANNUAL REVIEW OF COMPLIANCE.....	14
6.1 Annual Review.....	14
6.2 Developer's Submittal	14
6.3 Finding of Compliance	14
6.4 Hearing to Determine Compliance	14
6.5 Certificate of Compliance	15
6.6 Effect of Finding of Noncompliance; Rights of Developer.....	15
6.7 Reimbursement of Annual Review Costs.....	15
ARTICLE VII FORCE MAJEURE DELAYS; SUPERSEDURE BY SUBSEQUENT LAWS	15
7.1 Force Majeure Delays	15
7.2 Supersedure by Subsequent Laws.....	15
ARTICLE VIII ASSIGNMENT	16

ARTICLE IX AMENDMENT OR TERMINATION OF AGREEMENT	17
9.1 Generally	17
9.2 Certain Modifications	17
9.3 Implementing Memoranda.....	17
9.4 Amendment to Project Approvals.....	17
9.5 Effect of Termination.....	17
9.6 City Clerk Action.....	17
ARTICLE X DEFAULT, REMEDIES, TERMINATION.....	18
10.1 Default.....	18
10.2 Remedies Limitation.....	18
10.3 Developer Relief	18
10.4 Arbitration of Disputes	18
ARTICLE XI NOTICES.....	20
ARTICLE XII MORTGAGE PROTECTION.....	21
12.1 Mortgage Protection.....	21
12.2 Mortgagee Not Obligated	21
12.3 Notice of Default to Mortgagee	21
12.4 Reasonable Modifications Required by Mortgagee.....	22
ARTICLE XIII COOPERATION, NON-INTERFERENCE AND GOOD FAITH	22
ARTICLE XIV MISCELLANEOUS	22
14.1 Binding Covenants.....	22
14.2 Public Good	22
14.3 Negation of Partnership	22
14.4 No Third Party Beneficiary.....	22
14.5 Exhibits	22
14.6 Entire Agreement.....	23
14.7 Construction of Agreement.....	23
14.8 Severability	23
14.9 Mitigation of Damages	23
14.10 Irregularity in Proceeding	23
14.11 Applicable Law	24
14.12 Authorized Signatories; Signature Pages.....	24
14.13 Time	24
14.14 Days	24
14.15 Estoppel Certificate.....	24

EXHIBITS

Exhibit A: Legal Description of Property

Exhibit A-1: Plat of Property

Exhibit B: Legal Description of City Easement Property

Exhibit B-1: Plat of City Easement Property

Exhibit C: Project Site Plan

Exhibit D: List of Project Approvals

Exhibit E: Form of Easement for Improvements in City Right of Way

Exhibit F: Development Phases

Exhibit G: Airport Boulevard Dedication Parcel

Exhibit H: Developer Maintenance Areas

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (herein "Agreement"), dated as of the Adoption Date for purposes of convenience, is by and between the CITY OF BURLINGAME, a municipal corporation organized and existing under the laws of the State of California (herein "City") and 350 BEACH ROAD, LLC, a Delaware corporation (herein "Developer").

RECITALS

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

A. The Development Agreement Statute authorizes City to enter into development agreements establishing certain development rights and obligations for the development of real property within its jurisdiction.

B. Developer owns the Property, more particularly described in Exhibit A and depicted on Exhibit A-1 hereto.

C. City owns an easement for public road, utility and related purposes over the existing Airport Boulevard alignment immediately adjacent to the Property to the north and east, as described in Exhibit B and depicted on Exhibit B-1 (the "City Easement Property").

D. The Property and the City Easement Property are located in the City and constitute portions of the Anza Point North subarea of the Specific Plan.

E. Developer wishes to develop the Project on the Property and a portion of the City Easement Property. The Project is a multi-phase development consisting of (i) four (4) office and/or research & development buildings with ancillary retail/food service uses totaling approximately 730,000 square feet, (ii) an amenities building consisting of 37,000 square feet of childcare, commercial recreation and retail uses, (iii) a 5.5-level parking structure, surface and below-ground parking, (iv) associated infrastructure improvements including relocation and improvement of Airport Boulevard through the Project, (v) extension of the San Francisco Bay Trail through the Project and other pedestrian improvements including expansion of the existing bridge crossing Sanchez Channel, and (vi) public shoreline and open space improvements, all as more particularly described in the Project Approvals and is generally depicted on Exhibit C.

F. Developer desires to receive assurance that it may proceed with the Project in accordance with Existing City Regulations and Developer would not proceed to develop the Project were it not assured that the entire Project could be developed in accordance with this Agreement.

G. City has determined that the Project presents substantial public benefits voluntarily offered and agreed to by Developer and public improvements required by the Project, and that such public benefits and improvements exceed what City could otherwise achieve without this Agreement and the Project, which include without limitation: a relocated and

improved Airport Boulevard alignment, dedication of lands for future widening of Airport Boulevard and funding for future roadway improvements in the dedicated area if and when City constructs said improvements, widening of the existing bridge over Sanchez Channel, contribution to City's funding of improvements to the Broadway/US 101 interchange, improvements to the Bay Trail, open space and shoreline protection within the Project, additional funding for the Bayfront/Downtown shuttle, and on- and offsite wastewater infrastructure improvements.

H. The Project and this Agreement are the subject of an Environmental Impact Report (herein "EIR") prepared in conformance with CEQA. The EIR provides both a project-specific analysis of the Project and a programmatic analysis of the Project Approvals as they affect the remainder of the Anza Point North subarea.

I. On _____, 2012, the City Council adopted Resolution _____ certifying that the EIR complies with CEQA, making certain findings regarding the EIR and adopting a statement of overriding considerations and the MMRP, and approving the project, including Conditional Use Permit for Day Care use, vesting tentative subdivision map, and commercial design review. The EIR prepared for the Project analyzed the Project and provided environmental review as required by law for full build-out of the Project.

J. On _____, 2012, the City Council adopted Resolution _____ approving amendments to the Bayfront Specific Plan for the Anza Point North subarea.

K. On _____, 2012, the City Council adopted Ordinance No. _____, approving amendments to the City Municipal Code for the Anza Point North zoning district, and adopted Ordinance No. _____, reclassifying a portion of the Property from the APS zoning district to the APN zoning district.

L. On _____, 2012, the City Council adopted Ordinance No. _____ approving this Agreement, made appropriate findings that the Agreement and the development contemplated hereby are consistent with the Existing City Regulations.

M. For the reasons recited herein, Developer and City have determined that the Project is a development for which this Agreement is appropriate.

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Statute and in consideration of the foregoing Recitals and the mutual covenants and promises of the Parties herein contained, the Parties agree as follows:

ARTICLE I **DEFINITIONS**

Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term:

1.1 Adoption Date: The date the City Council adopts the Enacting Ordinance.

- 1.2 Anza Point North Wastewater Improvements: Wastewater infrastructure improvements constructed in the Specific Plan area that solely serve the Project and potential future development in the Anza Point North subarea.
- 1.3 Arbitration: Arbitration has the definition set out in Section 10.4.
- 1.4 Bayfront Development Fee: The development fee established by City Ordinance No. 1739, dated July 18, 2004, for development in the Bayfront Specific Plan Area.
- 1.5 CEQA: The California Environmental Quality Act (Public Resources Code Section 21000, *et seq.*) and the Guidelines thereunder (14 California Code of Regulations Section 15000, *et seq.*).
- 1.6 CEQA Documents: The information and documents prepared pursuant to the requirements of CEQA for the Project Approvals, and approved by the City Council through Resolution No. _____, in accordance with the requirements of CEQA.
- 1.7 City Building Permit: A building permit issued by City for any construction activity on the Project site consistent with state law and City Municipal Code.
- 1.8 City Easement Property: The property described in Exhibit B and depicted on Exhibit B-1.
- 1.9 City Fee: Fees or assessments charged to or required under City Regulations to defray the cost of public services or facilities or imposed for a public purpose.
- 1.10 City Regulations: The Burlingame General Plan, Bayfront Specific Plan, Municipal Code and all other ordinances, resolutions, codes, rules, regulations and policies of City.
- 1.11 Construction Codes and Standards: The City Regulations pertaining to or imposing life safety, fire protection, mechanical, electrical and/or building integrity requirements with respect to the design and construction of buildings and improvements.
- 1.12 Developer: 350 Beach Road, LLC, and any and all successors and assigns of all or any part of the Project permitted by this Agreement.
- 1.13 Development Agreement Statute: Government Code §§ 65864-65869.5, authorizing City to enter into development agreements as therein set forth.
- 1.14 Development Phase(s): Phases of the Project that may be developed either separately, at the same time or overlapping each other. Currently anticipated Development Phases are identified in Exhibit F hereto, but may be modified according to Developer's rights under Section 3.5. If so modified, Developer will provide to City a revised Exhibit F for the modified Development Phase. Such

modification, so long as it is otherwise consistent with the Project Approvals, shall not be deemed an amendment to this Agreement. Such modified Development Phases shall remain subject to the development timing provisions of Section 3.5.

- 1.15 Effective Date: The later of either (i) thirty (30) days after the Adoption Date, or (ii) thirty (30) days after the adoption of Ordinance No. ____ amending the Specific Plan.
- 1.16 Enacting Ordinance: Ordinance No. _____, adopted by the City Council on _____, 2012, enacting this Agreement.
- 1.17 Exaction: A monetary or in-kind exaction (other than City Fees), dedication or reservation requirement, an obligation for on-site or off-site improvements or construction of public improvements, or an obligation to provide services imposed on a development project. For purposes hereof, Exactions include mitigation measures imposed or adopted pursuant to CEQA.
- 1.18 Existing City Regulations: The City Regulations in effect on the Adoption Date as modified by the Project Approvals and permitted modifications in accordance with Sections 3.3 and 3.4.
- 1.19 Finally Granted: The date on which (i) any and all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Project Approvals or Governmental Agency Permits shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Project Approvals or Governmental Agency Permits, as applicable, shall have been upheld by a final decision in each such appeal without adverse effect on the applicable Project Approval or Governmental Agency Permits, and the entry of a final judgment, order or ruling upholding the applicable Project Approvals or Governmental Agency Permits, and (ii) if a referendum petition relating to the Project Approvals is timely and duly circulated and filed, certified as valid and City holds an election, the date the election results on the ballot measure are certified by City in the manner provided by the Elections Code reflecting the final defeat or rejection of the referendum.
- 1.20 Force Majeure: A delay in performance caused by war, terrorist acts, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, or acts of God; judicial proceedings initiated by third parties or enactment of Laws that prevent or preclude compliance by a Party with any material provision of this Agreement; acts of one Party, or failure of such Party to act when action is required, but only to the extent such acts or failure to act in and of itself prevents or precludes compliance by the other Party with any material provision of this Agreement; or other similar bases for excused performance that are not within the commercially reasonable control of the Party whose performance is to be excused, including without limitation, failure of City or any Governmental Agencies to issue any Subsequent Approvals or

Governmental Agency Permits. Force Majeure does not include delays that are within the commercially reasonable control of the Party whose performance is to be excused, delays associated with economic or market conditions, or delays related to financial inability or insolvency of a Party.

- 1.21 General Plan: The Burlingame General Plan as of the Effective Date.
- 1.22 Governmental Agencies: All governmental or quasi-governmental agencies (such as public utilities) that may have jurisdiction over, or the authority to regulate development of, the Project or any portion thereof. The term "Governmental Agencies" does not include City.
- 1.23 Governmental Agency Permits: Any permit, approval, consent, agreement or the like necessary or required for the construction of the Project or any portion thereof from any Governmental Agencies.
- 1.24 Indemnitee: The City, its elective and appointive boards, commissions, officers, agents and employees.
- 1.25 Laws: All laws and regulations of the United States of America, the State of California, regional Governmental Agencies, the County of San Mateo, and any decision of any Federal or state court thereunder.
- 1.26 MMRP: City's conditions of approval for the Project incorporating all mitigation measures required of the Project and monitoring and reporting requirements therefore under Public Resources Codes Section 21081.6 as part of the CEQA Documents.
- 1.27 Mortgage and Mortgagee: These terms have the respective definitions set out in Section 12.1.
- 1.28 Party: City or Developer. The term "Parties" refers to both City and Developer.
- 1.29 Plan Area Wastewater Improvements: Wastewater infrastructure improvements constructed in the Specific Plan area but not including the Anza Point North Wastewater Improvements.
- 1.30 Project: The development, use and occupancy of buildings and other improvements on the Property and a portion of the City Easement Property in accordance with the Project Approvals and as generally described in Recital E and depicted on Exhibit C.
- 1.31 Project Approvals: Those City land use approvals, entitlements and permits listed on Exhibit D and including any amendments thereto during the Term.
- 1.32 Property: The real property located at 300 Airport Boulevard, Burlingame, California as described in Exhibit A and depicted in Exhibit A-1.

- 1.33 Specific Plan: The Bayfront Specific Plan as modified by the Project Approvals.
- 1.34 Subsequent Approvals: Any other land use approvals, entitlements or permits from the City other than the Project Approvals, that are consistent with the Project Approvals and that are necessary or advisable for the implementation of the Project. Such Subsequent Approvals include without limitation public improvement agreements, grading permits, building permits, sewer and water connection permits, certificates of occupancy, license agreements and encroachment permits. Each Subsequent Approval, once granted, shall be deemed an Project Approval.
- 1.35 Term: The term of this Agreement as defined in Section 2.2.
- 1.36 Terminate: The termination of the Agreement, whether by the passage of time or by any earlier occurrence pursuant to any provision of this Agreement. The term "Terminate" includes any grammatical variant thereof, including "Termination" or "Terminated."
- 1.37 Transfer: The sale, assignment, conveyance, Mortgage, hypothecation or other alienation, excluding therefrom any grant of occupancy rights.

ARTICLE II

TERM

2.1 Commencement; Recordation. The rights, duties, obligations and interests of the Parties hereunder shall be effective, and the Term (as hereinafter defined) shall commence, as of the Effective Date. Not later than ten (10) days after the Effective Date, City Clerk shall cause this Agreement to be recorded in the Official Records of the County of San Mateo.

2.2 Expiration of Term. The term of this Agreement shall be ten (10) years from the Effective Date, unless sooner terminated as permitted hereunder ("Term"); provided, however, that if a lawsuit challenging the Project Approvals or any necessary Governmental Agency Permits for the development of the Project is initiated the Term shall be extended for the number of days equal to period from the initiation of the lawsuit to the date that the Project Approvals and Governmental Agency Permits are Finally Granted. Following the expiration of the Term, this Agreement shall be of no further force and effect. Not later than ten (10) days after Developer's request, the City Clerk shall cause a notice of Termination of this Agreement to be recorded in the Official Records of the County of San Mateo.

2.3 Early Termination. Developer shall, upon ten (10) days prior written notice to City, have the right, in its sole and absolute discretion, to Terminate this Agreement at any time prior to issuance of the first City Building Permit.

ARTICLE III

DEVELOPMENT OF THE PROPERTY

3.1 Project Development; Permitted Uses; Control of Development. City and Developer acknowledge that Developer has obtained all necessary Project Approvals for the

development, construction, use and occupancy of the Project, other than certain Subsequent Approvals, and that subject to the attainment of such Subsequent Approvals, as applicable, Developer may proceed with the phased development, construction, use and occupancy of the Project as a matter of right under this Agreement. For the duration of this Agreement, the permitted uses of the Property and City Easement Property, the density and intensity of use of the Property and the City Easement Property, the maximum height, bulk and size of Project improvements, and Exactions applicable to the Project shall be those set forth in the Project Approvals, and City Fees shall be those set forth in the Existing City Regulations (except those City Fees otherwise permitted under this Agreement). In the event of a conflict between relevant time periods for performance and/or expiration of the Project Approvals, or any of them, this Agreement shall control. For the duration of this Agreement and except as otherwise specified herein, the Project Approvals, Existing City Regulations and this Agreement shall control the overall development and construction of the Project, and all on-site and off-site improvements and appurtenances in connection therewith, in the manner specified in this Agreement. In the event of any inconsistency between the Existing City Regulations and this Agreement, this Agreement shall control.

3.2 Subsequent Approvals. The Parties agree that to implement development of the Project, Developer must obtain certain Subsequent Approvals from City other than the Project Approvals. Except as otherwise provided by Section 3.3 and Section 3.4, for the duration of this Agreement, the standards, rules, regulations and ordinances applicable to the Subsequent Approvals shall be the Existing City Regulations.

3.3 Regulations for Health and Safety. Notwithstanding any other provision of this Agreement to the contrary, City shall have the right to apply City Regulations adopted after the Adoption Date, if such application (i) is otherwise required pursuant to changes in Laws; (ii) a failure to do so would place existing or future occupants or users of the Project, or any portion thereof, or the immediate community, or all of them, in a condition dangerous to their physical health or safety, or both and (iii) such City Regulation is as narrowly crafted as possible to minimize effect on the Project and still meet the requirements of said changes in Laws. This Section is not intended to be used for purposes of general welfare or to limit the type, intensity, rate or conditions of development or use of the Project or Property. Nor is this Section intended to permit the application of additional long range planning policies to the Project.

3.4 Construction Codes and Standards. City shall have the right to apply to the Project the Construction Codes and Standards in effect at the time of submission of any application for Subsequent Approval.

3.5 Timing of Development of Project. This Agreement does not require Developer to initiate or complete development of the Project, nor that development be initiated or completed in any particular order. The Parties anticipate that Developer will construct the Project in the Development Phases identified in Exhibit F over the duration of this Agreement, but Developer may construct all or parts of the Development Phases simultaneously or in such order as it deems appropriate in its sole discretion. In Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), the California Supreme Court ruled that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement. It is the intent of

the Parties to avoid such a result by acknowledging and providing for the timing of development of the Project in the manner set forth in this Section 3.5. City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute and this Agreement.

The Parties acknowledge that Developer cannot guarantee the exact timing of the construction of the Project, but subject to Section 7.1, if Developer has not obtained a permit to proceed with site preparation work for (i) Development Phase One within three (3) years from the date all Project Approvals and Governmental Agency Permits are Finally Granted or five (5) years after the Effective Date, whichever is earlier, or (ii) a City Building Permit for Development Phase Two within seven (7) years from the date all Project Approvals and Governmental Agency Permits are Finally Granted or nine (9) years after the Effective Date, whichever is earlier, City may Terminate this Agreement. Prior to pursuing such action, City shall meet and confer with Developer to discuss a reasonable extension of this requirement, which shall be granted by City if, to City's reasonable satisfaction, Developer demonstrates that a financial or market condition beyond the control of Developer, such as market absorption and demand, interest rates, availability of project financing or similar conditions, are the primary cause of Developer's inability to meet this requirement.

The Parties agree that each Development Phase of the Project shall be constructed in such manner as to operate wholly and independently from the un-constructed portion of the Project and in conformance with all conditions and regulations applicable to the Project pursuant to this Agreement.

ARTICLE IV **OBLIGATIONS OF THE PARTIES**

4.1 Developer's Obligations. If Developer elects to develop the Property, (i) said development shall be accordance with the Project Approvals and Developer shall comply with the conditions of such in the time and manner specified therein, and (ii) Developer shall make all commercially reasonable efforts to obtain Governmental Agency Permits necessary to complete construction of the Project.

The Parties acknowledge and agree that the Project presents substantial public benefits and public improvements, and that such public benefits and improvements exceed what City could otherwise achieve without this Agreement and the Project, as more particularly described below:

a. Airport Boulevard Realignment. Developer shall realign Airport Boulevard from its existing route on the perimeter of the Property to a route through the interior of the Property as shown in the Project Approvals and shall relocate all utilities into the new Airport Boulevard alignment as required by the Project Approvals, prior to the final certificate of occupancy for the first Project building.

b. Dedication of Future Airport Boulevard Alignment. As shown in the Project Approvals, Developer shall dedicate a portion of the Property as shown on Exhibit G (the "Dedication Parcel") to the City to be used for future widening of Airport Boulevard to the

southeast of the Property if and when undertaken by City or other party. If City begins construction on widening Airport Boulevard within the Term, Developer shall pay to City the reasonable costs of said construction on the Dedication Parcel. Such payment shall be made upon City's issuance of a Notice to Proceed with the widening. If City does not issue a Notice to Proceed prior to Termination, Developer shall, upon Termination, pay to City an amount equal to the product of (a) Developer's unit cost per square foot for its surface improvements to Airport Boulevard and (b) the square footage of the Dedication Parcel.

c. Sanchez Channel Bridge Widening. Developer shall expand the existing bridge over Sanchez Channel in accordance with the San Francisco Bay Conservation and Development Permit No. 4-86(A) or as otherwise contemplated in Governmental Agency Permits received by City or Developer for such construction, prior to the final certificate of occupancy for the first Project building.

d. Broadway/Highway 101 Interchange Reconstruction Contribution. Developer agrees to contribute one million dollars (\$1,000,000) to City to assist in funding City's required contribution to the Broadway/U.S. Highway 101 Interchange Reconstruction Project. Developer shall provide such funds upon the earlier of the issuance of the first City Building Permit for construction of a building (e.g., not including permits for site preparation work such as excavation, grading and demolition) or _____, 2014. If the Broadway/U.S. Highway 101 Interchange Reconstruction Project is not constructed within the Term, City shall use said funds for widening of Airport Boulevard to the southeast of the Project site, or other improvements within the Anza Point North or Anza Point South subareas of the Specific Plan.

e. Shuttle Funding. Commencing upon the date City issues the final certificate of occupancy for the first Project building, Developer shall owe to City a contribution of \$250,000 for the operation of the shuttle bus from Bayfront area to downtown Burlingame, payable in a lump sum or in annual installments of no less than of \$25,000, at Developer's discretion.

f. Bay Trail Improvements. Developer shall construct segments of the San Francisco Bay Trail and connecting trails within the Project site in accordance with the Project Approvals and Governmental Agency Permits, as generally depicted on Exhibit C (herein "Bay Trail Improvements"), prior to the final certificate of occupancy for the first Project building in the Development Phase in which each is included.

g. Open Space Improvements. Developer shall construct shoreline open space improvements (i) associated with the Bay Trail extension, (ii) on the existing Airport Boulevard alignment, (iii) along Sanchez Channel, and (iv) adjacent to the spur access road to Fisherman's Park constructed on the existing Airport Boulevard alignment in accordance with the Project Approvals and Governmental Agency Permits, as generally depicted on Exhibit C (herein "Open Space Improvements"), prior to the final certificate of occupancy for the first Project building in the Development Phase in which each is included].

h. Shoreline Protection. Developer shall rehabilitate existing shoreline protection for the Project in accordance with the Project Approvals and Governmental Agency Permits, prior to completion of the Development Phase in which it is included.

i. Maintenance. Developer shall maintain all sidewalks, median strips, landscaping elements, walkways, special pedestrian crossing treatments in the roadway, drainage facilities, Open Space Improvements and Bay Trail Improvements shown on Exhibit H.

j. Wastewater Infrastructure. Consistent with the Project Approvals, Developer shall prepare and submit engineering studies identifying the timing and manner of the construction of the Anza Point North Infrastructure Improvements and the Plan Area Infrastructure Improvements for approval by the City Engineer, and shall construct same in accordance with said approved studies.

k. Survival of Developer's Maintenance Obligation. Developer's maintenance obligation under 4.1(i), shall survive the Termination of this Agreement but only to the extent the obligation to perform same has arisen before such Termination.

l. City Building Permit Revocation. Developer acknowledges that the Existing City Regulations permit City to revoke a City Building Permit for failure to timely proceed with or abandonment of the work authorized under the City Building Permit. In the event of such revocation, Developer shall secure or remove any incomplete or unsafe structures on the Property as required under the Existing City Regulations.

4.2 Condition to Developer's Obligations. Notwithstanding any other provision of this Agreement, Developer shall have no obligation to provide the public benefits and improvements in Section 4.1 above unless and until the Project Approvals and any Governmental Agency Permits necessary for the development of the Project have been Finally Granted and, except as provided in Section 4.1(d), City has issued the first City Building Permit for construction of a building (e.g., not including permits for site preparation work such as excavation, grading and demolition).

4.3 City's Obligations.

a. City's Good Faith in Processing. For the duration of this Agreement, City shall in good faith accept for processing, review and take action on all applications for Subsequent Approvals with respect to the Project. City shall cooperate with Developer and shall promptly and timely review and process all such applications, including the timely provision of notice and scheduling of all required public hearings, and processing and checking of all maps, plans, permits, building plans and specifications and other plans relating to development of the Project filed by Developer. City's review of Subsequent Approvals shall use the CEQA Documents to the fullest extent permitted by Law. City shall approve, disapprove or conditionally approve the Subsequent Approvals in accordance with the discretion provided it by the Existing City Regulations and Laws and, except upon application or request by Developer, in a manner consistent with the Project Approvals. Nothing in this Section 4.3(a) shall authorize City to prevent development of the Project for the uses and with the density or intensity of development set forth in the Project Approvals.

b. Cooperation with Developer. City shall cooperate with Developer to obtain any Governmental Agency Permits, including without limitation consenting to be a co-applicant for any necessary permits, authorizations or modifications thereof from the Bay

Conservation and Development Commission. City shall allow Developer to assume, or if necessary shall assign to Developer, City's rights under any Governmental Agency Permits which rights may be necessary or required for construction of any part of the Project.

c. Airport Boulevard Right of Way. City agrees to grant to Developer an easement generally in the form of Exhibit E for access over the City Easement Property to install or construct the portion of the realigned Airport Boulevard thereon, the Bay Trail Improvements and Open Space Improvements, landscaping elements, shoreline protection and related improvements on City Easement Property in accordance with the Project Approvals.

d. Roadway Infrastructure Reimbursement. The Bayfront Development Fee owed for the Project shall be offset by the actual costs incurred by Developer in designing, preparing, installing and constructing (a) the realignment and widening of Airport Boulevard but limited to the customary and ordinary costs for such improvements without special pedestrian treatments, and (b) the Sanchez Channel bridge widening, under Section 4.1(a), (c) respectively.

e. Anza Point North Subarea Reimbursement Requirement. The Parties acknowledge that Developer's Anza Point North Wastewater Improvements exceed those solely required for the Project. As such, City agrees to cause Developer's actual costs of designing, preparing, installing and constructing the Anza Point North Wastewater Improvements ("Developer's Anza Point Costs") to be proportionately reimbursed. City shall do so by imposing a condition of approval on future development in the Anza Point North subarea requiring the payment of a fair share of Developer's Anza Point Costs (the "Anza Point Fair Share") to Developer. The Anza Point Fair Share shall be determined by multiplying the Developer's Anza Point Costs by a fraction, the numerator of which is the total square footage of such future development and the denominator of which is the total square footage of development permitted within the Anza Point North subarea under the Existing City Regulations.

f. Specific Plan Area Reimbursement Requirement. The Parties acknowledge that Developer's Plan Area Wastewater Improvements exceed those solely required for the Project. As such, City agrees to cause Developer's actual costs of designing, preparing, installing and constructing the Plan Area Wastewater Improvements ("Developer's Plan Area Costs") to be proportionately reimbursed. City shall do so by imposing a condition of approval on any future development served by the Plan Area Wastewater Improvements ("Benefitted Development") requiring payment of a fair share of Developer's Plan Area Costs (the "Plan Area Fair Share") to Developer. The Plan Area Fair Share shall be determined by multiplying the Developer's Plan Area Costs by a fraction, the numerator of which is the total square footage of the Benefitted Development and the denominator of which is the total square footage of the development permitted within the Specific Plan area under Existing City Regulations after the Effective Date (including the Project). For example, if Developer's Plan Area Costs are \$2,000,000 and a Benefitted Development is a 60,000-square foot project, then the calculation would be $\$2,000,000 \times [60,000 \text{ sf} \div (60,000 \text{ sf} + 767,000 \text{ sf (the Project square footage)} + (\text{square footage of remaining potential development in the Specific Plan area after the Effective Date}))]$.

g. Survival of Reimbursement Obligations. City's reimbursement obligations under Sections 4.3(d)-(f) shall survive Termination of this Agreement but only to the extent the obligation to perform same has arisen before such Termination.

h. Other City Fees.

i. Building Permit Fees. City shall limit building permit fees to 2% of construction costs of work described in the permit application, payable upon application submission. Developer's current intention is to submit building permit applications in increments as follows: (1) Predevelopment Phase; (2) Development Phase One (but not including the Amenities Center); (3) Amenities Center; and (4) Development Phase Two, all as shown on Exhibit C. The foregoing limitation shall not apply to school impact fees, fire department fees, encroachment permit fees, sign fees, sewer connection fees or building permits for additional build-out of work not included in the initial building permit for a building. The Construction and Demolition Recycling Deposit shall be \$150,000.00 for the Project.

ii. Waiver of Certain Public Facilities Impact Fees. City acknowledges the extensive open space, recreation, and storm water infrastructure improvements being performed under the Project, and agrees to waive City's Park and Recreation facilities impact fee and storm drainage facilities impact fee.

iii. Other Public Facilities Impact Fees. All other public facilities impact fees (as listed in Chapter 25.80 of the City Municipal Code) shall be payable by Development Phase and shall be due upon issuance of the first Development Permit, which, for the purposes of this Agreement, shall mean the first City Building Permit for construction of a building (e.g., not including permits for site predevelopment work such as excavation, grading and demolition).

and including the Bayfront Development

i. Future Airport Boulevard Alignment. To the extent City or another party undertakes future widening of Airport Boulevard as described in Section 4.1(b), City shall, at Developer's request, vacate and reconvey to Developer for no additional compensation any portion of the Airport Boulevard right of way through the Property that is not required for such future widening.

4.4 Tentative Map; Expiration. Any tentative subdivision map approved for the Project shall comply with Government Code Section 66473.7. The term of Vesting Tentative Map No. _____ shall be extended for the Term as permitted under Government Code Section 66452.6.

4.5 Acceptance of Dedications. City agrees to promptly accept dedications of public improvements constructed consistent with the Project Approvals when such dedications are made by Developer, except that if such acceptance is made prior to Developer's completion of construction of the Development Phase of the Project in which such public improvements are located, Developer shall enter into a maintenance agreement with City to maintain such public improvements until such time as is provided in any such agreement.

ARTICLE V

INDEMNITY

5.1 Developer's Indemnity. Developer hereby agrees to and shall hold Indemnitees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer or Developer's contractors', subcontractors', agents' or employees' operations upon City's property under this Agreement, whether such operations be by Developer, or by any of Developer's contractors, subcontractors, or by any one or more persons employed by, or acting as agent for, Developer or any of Developer's contractors or subcontractors, excepting suits and actions brought by Developer for default of this Agreement or arising from the negligence or willful misconduct of City or any other Indemnities.

5.2 Legal Challenge; Cooperation. In the event of any legal action instituted by a third party challenging any provision of this Agreement, the procedures leading to its adoption, or its implementation, including without limitation, the issuance of the Project Approvals or Governmental Agency Permits to which City is a permittee, the Parties agree to affirmatively cooperate in defending said action and, if necessary, execute a joint defense and confidentiality agreement to share and protect information under the joint defense privilege recognized under applicable law. As part of their cooperation in defending an action, City and Developer shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information.

5.3 Attorney's Fees and Costs. Developer's obligation under this Article V includes the obligation to pay for the costs and reasonable attorneys' fees of City and any outside counsel retained by City to defend it in any court action, administrative action or other proceeding brought by any third party challenging any provision of this Agreement, the procedures leading to its adoption, or its implementation, including without limitation, the issuance of the Project Approvals or Governmental Agency Approvals. In the event City elects to select and employ independent defense counsel, Developer may jointly participate in and reasonably approve such selection. In the event that City elects for Developer to defend an Indemnitee with counsel designated by Developer, then such counsel shall be reasonably acceptable to City. If Developer is obligated to indemnify an Indemnitee under this Article V, Developer, the City Attorney and any outside counsel shall fully coordinate and cooperate in the defense of any action and shall keep each other fully informed of all developments relevant to such indemnity.

5.4 Notice. City agrees to give prompt notice to Developer with respect to any suit or claim subject to this Article V initiated or threatened against City, and in no event, later than the earlier of (a) seven (7) days after valid service of process as to any filed suit, or (b) twelve (12) days after receiving notification of the filing of such suit or the assertion of such claim, which City has reason to believe is likely to give rise to a claim for indemnity hereunder. To the extent Developer is prejudiced by City's failure to give such notice, then Developer's liability hereunder shall terminate as to the matter for which notice is not timely given.

5.5 No Personal Liability. It is understood and agreed that no commissioners, members, officers, agents, or employees of City (or of its successors or assigns) shall be personally liable to Developer nor shall any officers, directors, shareholders, agents or

employees of Developer (or of its successor or assigns) be personally liable to City in the event of any default or breach of this Agreement.

ARTICLE VI

ANNUAL REVIEW OF COMPLIANCE

6.1 Annual Review. City and Developer shall annually review this Agreement, and all actions taken pursuant to the terms of this Agreement with respect to the Project, in accordance with the provisions of this Article VI.

6.2 Developer's Submittal. Not later than sixty (60) days prior to each anniversary date of the Effective Date for the duration of the Term, Developer shall initiate the annual review by submitting a report to City's Community Development Director describing Developer's good faith compliance with the terms of this Agreement during the preceding year.

6.3 Finding of Compliance. Within thirty (30) days after Developer submits its report under Section 6.2, the Community Development Director shall review Developer's submission to make an initial determination whether Developer has demonstrated good faith compliance with the material terms of this Agreement. If the Community Development Director makes an affirmative determination, or does not determine otherwise within thirty (30) days after delivery of Developer's report, the annual review shall be deemed concluded. The Community Development Director may also, prior to the expiration of the 30-day period specified in this Section 6.3, refer the determination of Developer's good faith compliance to the City Council, and shall provide Developer notice of his or her intent to make such referral within said 30-day period.

6.4 Hearing to Determine Compliance. Within seven (7) days of notice to Developer provided under Section 6.3, the Community Development Director shall request that the City Council conduct a public hearing on Developer's good faith compliance with the material terms of this Agreement. The Community Development Director shall prepare and submit to the City Council, City Manager and Developer a staff report making his or her initial recommendation at least fourteen (14) days prior to the of providing the public hearing. Such report shall specify in reasonable detail the basis for the recommendation so that Developer may address the recommendation at the hearing held by the City Council, including, if necessary, a proposal for a reasonable time for Developer to take any necessary corrective actions.

The City Council shall conduct a noticed public hearing to make a final determination on the good faith compliance by Developer with the material terms of this Agreement. At such hearing, Developer shall be entitled to submit evidence, orally or in writing, and address the recommendations of the staff report on, or germane to, the issue of Developer's good faith compliance with the material terms of this Agreement. After receipt of any written or oral response of Developer, and after considering all of the evidence at such public hearing, the City Council shall make a determination, on the basis of substantial evidence, concerning Developer's compliance in good faith with the material terms of this Agreement, and, if necessary, specify a reasonable time for Developer to bring its performance into good faith substantial compliance with the material terms of this Agreement ("City Recommendation").

If the areas of noncompliance specified by the City Council are not corrected within the time limits so prescribed, then the City Council may extend the time for compliance for such reasonable period as it may determine (with conditions, if the City Council deems appropriate), or may take action to Terminate or (subject to agreement by Developer) to modify this Agreement.

6.5 Certificate of Compliance. If the City Community Development Director or the City Council finds good faith compliance by Developer with the material terms of this Agreement under Section 6.3, the City Community Development Director shall issue a certificate of compliance within ten (10) days thereafter, certifying Developer's good faith compliance with the material terms of this Agreement through the period of the applicable annual review.

6.6 Effect of Finding of Noncompliance; Rights of Developer. If the City Council determines that Developer has not complied in good faith with the material terms of this Agreement pursuant to Section 6.4 above, then prior to City's Terminating or seeking to modify this Agreement, Developer and City agree that Developer may submit the dispute as to Developer's good faith compliance with the material terms to Arbitration under the provisions of Section 10.4 of this Agreement.

6.7 Reimbursement of Annual Review Costs. Developer shall pay City for the reasonable costs incurred in conducting its annual review of the Agreement within thirty (30) days of receipt of an invoice from City for such costs. The amount reasonably charged shall not exceed Five Thousand Dollars (\$5,000.00) for the first year in which annual review of the Agreement is conducted. The maximum reimbursement for reasonable review costs may increase at a compounded rate of 2.0% per year for each subsequent year of review.

ARTICLE VII

FORCE MAJEURE DELAYS; SUPERSEDURE BY SUBSEQUENT LAWS

7.1 Force Majeure Delays. Performance by a Party of its obligations hereunder shall be excused during, and extended for a period of time equal to, any period of delay caused at any time by reason of Force Majeure. Promptly after learning of the occurrence of a Force Majeure event, the affected Party shall notify the other Party of the occurrence of such Force Majeure event.

7.2 Supersedure by Subsequent Laws.

a. Modification/Suspension. This Agreement shall not preclude application to the Property or the Project of changes in Laws or new Laws, nor shall anything in this Agreement preclude City from imposing on Developer any fee required by Laws where application of changes in Laws are specifically mandated and required by such Laws. If any Law enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent such can be accomplished in a commercially reasonable manner and not materially increase either Party's obligations hereunder, be modified or suspended by the Parties as may be necessary to comply with such new Law. Immediately after becoming aware of any such new Law, the Parties shall meet and confer in good faith to determine any such modification or suspension which may be

necessary or appropriate and the effect any such modification or suspension would have on the purposes and intent of this Agreement. At the conclusion of such meet and confer process or ninety (90) days after such new Law takes effect, whichever is earlier, either Party may initiate proceedings to suspend, or with the agreement of the other Party, to modify this Agreement as may be necessary to comply with such new Law. Such proceedings shall be initiated by public notice given in accordance with the City Regulations.

b. Contest of New Laws. Either Party shall have the right (but not the obligation) to contest changes in Laws or new Laws preventing compliance with the terms of this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. The City, in making any determination under Section 7.2.a, shall take into account the likelihood of success of any contest pending hereunder, and if the contesting Party or any other person has obtained interim relief preventing enforcement of such new Law, then the City shall delay consideration of action on modifications to or suspension of this Agreement pursuant to Section 7.2.a above until such contest is concluded or such interim relief expires.

c. Termination. If in the reasonable business judgment of Developer, such changes in Laws or new Laws prevent, preclude or materially and adversely affect Developer's ability to develop, construct, operate, repair, maintain or restore the Project in a commercially reasonable manner, or City and Developer are unable to reasonably agree on whether or what modifications to this Agreement would be necessary and appropriate to comply with such changes in Laws or new Laws, then Developer or City may elect to Terminate this Agreement upon thirty (30) days prior notice to the other Party.

ARTICLE VIII **ASSIGNMENT**

8.1 Developer has the right to Transfer the Property at any time during the Term without the consent of City provided that it also transfers any applicable portion of its interest, rights or obligations under this Agreement with respect to the portion of the Property transferred. In the event of a Transfer of a portion of the Property, Developer shall retain all rights, duties, obligations or interests applicable to the retained portion or portions of the Property.

8.2 Upon Developer's Transfer and City's receipt of an assumption agreement as provided for herein, Developer shall be released from its duties and obligations so Transferred, and any subsequent default or breach with respect to such Transferred rights, duties, obligations or interests shall not constitute Developer's default or breach with respect to Developer's remaining rights, duties, obligations or interests under the Agreement; provided that (a) Developer has provided City with notice of such Transfer in accordance with Article XI, and (b) the transferee executes and delivers to City an agreement in which (i) the name and address of the Transferee is set forth and (ii) the transferee assumes such rights, duties, obligations or interests of Developer so Transferred. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.

ARTICLE IX
AMENDMENT OR TERMINATION OF AGREEMENT

9.1 Generally. Except as expressly provided herein, this Agreement may be Terminated, modified or amended only by the consent of the Parties made in writing, and then only in the manner provided for in Section 65868 of the Development Agreement Statute.

9.2 Certain Modifications. Modifications to the Project Approvals or this Agreement not related to the Term; permitted uses of the Property or City Easement Property; density or intensity of uses in the Project; maximum height, bulk or size of the Project improvements; provisions for City Fees or Exactions; or other material provision of this Agreement shall not be deemed an amendment of this Agreement. Unless otherwise required in accordance with procedures applicable under the Existing City Regulations, such changes shall not require a noticed public hearing before the Parties execute such modification. The Community Development Director shall, after considering input from Developer, make the determination on behalf of City as to whether a noticed public hearing is necessary.

9.3 Implementing Memoranda. The Community Development Director is authorized to execute, on behalf of City, without the necessity of amending this Agreement, implementing memoranda that the Community Development Director determines are in the best interests of City, do not materially increase City's obligations or materially diminish City's rights under this Agreement and further the purposes and intent of this Agreement. Such implementing memoranda may include such things as, but are not limited to, minor changes to notice periods or procedures, minor changes to the dates for delivery of documents, data, information or other materials, or corrections to inadvertent or non-material errors in the Agreement. Implementing memoranda prepared pursuant to this Section shall be effective upon execution by both the Community Development Director and Developer.

9.4 Amendment to Project Approvals. Material amendments to Project Approvals shall require an amendment to this Agreement only if and to the extent such amendments are to be vested under Section 3.1.

9.5 Effect of Termination. Upon Termination, this Agreement and all of the rights, duties and obligations of the Parties hereunder shall, except as explicitly provided herein, automatically Terminate and be of no further force or effect. Except for the rights conferred by this Agreement, any right that is otherwise vested under Laws, as applicable, shall not expire due to Termination. Upon any Termination of this Agreement, City shall retain any and all benefits received by City as of the date of Termination under or in connection with this Agreement. No Termination of this Agreement shall prevent Developer from completing and occupying buildings or other improvements authorized pursuant to valid building permits previously approved by City or under construction at the time of Termination, except that nothing herein shall preclude City, in its discretion, from taking any action authorized by Laws or Existing City Regulations to prevent, stop or correct any violation of Laws or Existing City Regulations occurring before, during or after construction.

9.6 City Clerk Action. If the Parties amend, modify or Terminate this Agreement as herein provided, or this Agreement is modified or Terminated pursuant to any provision hereof,

then the City Clerk shall, within ten (10) days after such action takes effect, cause an appropriate notice of such action to be recorded in manner specified in Section 2.1 in the Official Records of the County of San Mateo.

ARTICLE X

DEFAULT, REMEDIES, TERMINATION

10.1 Default. Failure by a Party to perform any term or provision of this Agreement shall constitute an "Event of Default." Except in cases where the breach of this Agreement presents a threat of imminent harm, the non-defaulting party shall give the other not less than thirty (30) days' notice of any Event of Default in writing, specifying the nature of the alleged default ("Notice"). If such default is not cured within thirty (30) days after delivery of the Notice, or if the cure reasonably requires more than thirty (30) days to complete and there is failure to begin the cure within the 30-day period or failure to continue diligently to completion of the cure, the non-defaulting party may proceed as specified in this Article X.

10.2 Remedies Limitation. In the event of a Default under this Agreement, the remedies available to a Party shall include specific performance of this Agreement in addition to any other remedy available at law or in equity. Notwithstanding the foregoing, however, neither Party shall ever be liable to the other Party for any consequential damages on account of the occurrence of an Event of Default (including claims for lost profits, loss of opportunity, lost revenues, or similar consequential damage claims), and the Parties hereby waive and relinquish any claims for consequential damages on account of an Event of Default, which waiver and relinquishment the Parties acknowledge has been made after full and complete disclosure and advice regarding the consequences of such waiver and relinquishment by counsel to each Party.

10.3 Developer Relief. In addition to remedies specified in Section 10.2 above, in the event City does not in good faith accept application(s) for, and review, approve or issue development permits or entitlements to Developer as necessary or required for development or use of the Project by and in accordance with the terms of this Agreement; or City fails to cooperate with Developer in the manner and for the purposes so specified herein, or City otherwise defaults under the terms of this Agreement, Developer shall not be obligated to proceed with or complete the improvements required under this Agreement including the public benefits described in Section 4.1, or any phase thereof.

10.4 Arbitration of Disputes.

a. Arbitration Generally. Any disputes arising out of the breach of this Agreement shall be submitted to JAMS in San Francisco, or its successor, in front of a single disinterested arbitrator for final and binding arbitration in accordance with this Section 10.4 ("Arbitration").

b. Arbitration Demand; Selection of Arbitrator. Either Party may file an Arbitration demand with JAMS within sixty (60) days after the date on which notice of an Event of Default is provided pursuant to Section 10.1. Within ten (10) days from the date that a Party makes a written demand for Arbitration, the Parties shall meet and confer to select an arbitrator. The arbitrator to be used for an Arbitration must be someone who is not now, and within the

preceding five (5) years has not been, employed or hired by, or had a business relationship with, either Party or either Party's lawyers or any entity owned or controlled in whole or in part by either Party, and who is not a personal friend of either Party, its employees, or its lawyers. The arbitrator shall reveal any circumstances regarding the claim or the Parties that he or she believes might affect his or her impartiality. The arbitrator's disclosures shall be in writing, and the Parties shall have seven (7) days after receiving a disclosure in which to disqualify the arbitrator based upon good faith concerns arising from the written statement. An arbitrator shall not be disqualified simply because he or she has in the past been hired by attorneys for either Party as part of an arbitration or mediation procedure involving an unrelated subject matter, so long as the arbitrator discloses such relationship and affirms that he or she is able to impartially consider the matters to be presented in the Arbitration. In the absence of agreement by the Parties, JAMS shall designate a disinterested retired judge from Alameda, San Francisco, San Mateo or Santa Clara counties to be the arbitrator, either through a process of having the Parties strike names from a list of potential arbitrators, or by otherwise selecting an arbitrator at JAMS's discretion.

i. Arbitration Procedures.

(a) The Arbitration will be conducted in San Mateo County, or another location agreeable to both Parties, before an arbitrator selected according to this Section 10.4.b who will be instructed to apply the California Rules of Evidence. The JAMS Comprehensive Arbitration Rules and Procedures effective as of October 1, 2010 will apply, except to the extent specifically modified herein (the "JAMS Rules"). The cost of the arbitrator and the JAMS fees shall be split and paid equally by the Parties. The Arbitration award shall be final and binding, and is not subject to appeal. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

(b) The arbitrator shall determine the scope and timing of discovery, which shall include, at a minimum, the following:

(i) In advance of the Parties' exchange of initial lists of percipient witnesses, counsel shall meet and confer about exchanging documents. Either Party may request documents from the opposing Party, and the arbitrator shall resolve any disputes over the scope of documents to be produced.

(ii) Counsel shall meet and confer to discuss testimony and depositions. At a time agreed upon by counsel or set by the arbitrator, the Parties shall exchange an initial list of the percipient witnesses each Party reasonably anticipates it will call to testify at the Arbitration. After the exchange of initial lists, a Party may supplement its list of witnesses if the other Party's designations or further discovery or investigation in good faith leads that Party to conclude that the testimony of additional percipient witnesses would be advisable.

(iii) At a time agreed upon by counsel or set by the arbitrator, but after documents have been exchanged and the depositions have been completed, the Parties shall simultaneously exchange designations of expert witnesses. The designation of expert witnesses, and the designation of any rebuttal or supplemental expert witnesses, shall be governed by the procedures of Code of Civil Procedure Section 2034 *et seq.*, including that each

Party shall have an opportunity to depose each expert witness designated by the opposing Party. At least ten (10) business days in advance of the deposition of the first expert, the Parties shall simultaneously exchange any expert reports, and all documents that are in the experts' possession, custody, or control, or the possession, custody, or control of the Party disclosing the experts and that any expert has relied on or reviewed in preparing his or her opinion.

(iv) At a time to be arranged by counsel or the arbitrator, but at least ten (10) days before the Arbitration hearing commences, each Party will provide the opposing Party with copies of a full set of documents that it intends to introduce at the Arbitration.

ii. Alternate Dispute Resolution Providers. In the event that neither JAMS nor its successor exists at the time for resolving a dispute hereunder, then the American Arbitration Association ("AAA") or its successor shall be used for Arbitration procedures set forth herein; provided, however, the JAMS Rules shall be used in lieu of the AAA's Commercial Arbitration Rules. If neither JAMS nor AAA nor a successor of either exists, then, at the option of the first to commence an Arbitration, the Arbitration shall be administered by a then-existing alternate dispute resolution provider located in San Mateo, San Francisco, Santa Clara or Alameda Counties, which provider shall have no fewer than 5 retired judges from Alameda, San Francisco, San Mateo and Santa Clara counties on its list of approved arbitrators.

ARTICLE XI

NOTICES

All notices or communication under this Agreement or the Development Agreement Ordinance shall be in writing and delivered in person or sent by first class, postage prepaid, certified mail, addressed as follows:

If to City:

Director of Community Development
City of Burlingame
501 Primrose Road
Burlingame, CA 94010

with a copy to:

City Attorney
City of Burlingame
501 Primrose Road
Burlingame, CA 94010

If to Developer:

350 Beach Road, LLC
c/o Millennium Partners
735 Market Street, Sixth Floor
San Francisco, CA 94103

with a copy to:

Millennium Partners
1995 Broadway
New York, NY 10023

All notices required by this Agreement shall be deemed given, received, made or communicated (i) if by personal service, on the date personal receipt actually occurs or, (ii) if mailed, on the delivery date or attempted delivery date shown on a return receipt. Any Party may change the address stated herein by giving notice thereof to the other Party at least ten (10) days prior to the effective date of the address change, and thereafter notices shall be addressed and transmitted to the new address. Notices and communications with respect to technical matters in the routine performance and administration of this Agreement shall be given by or to the appropriate representative of a Party by such means as may be appropriate to ensure adequate communication of the information, including written confirmation of such communication where necessary or appropriate.

ARTICLE XII

MORTGAGE PROTECTION

12.1 Mortgage Protection. This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, eviction or otherwise.

12.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 12.1, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of the Project or public benefits described in Section 4.1, or to guarantee such construction or completion.

12.3 Notice of Default to Mortgagee. If City receives a notice from a Mortgagee requesting a copy of any Notice given Developer under Section 10.1 and specifying the address for service thereof, then City agrees to use its best efforts to deliver to such Mortgagee in the manner specified in Article XI, concurrently with service thereon to Developer, (i) any Notice given to Developer with respect to any claim by City that Developer has committed an Event of Default, or (ii) any City Recommendation made pursuant to Section 6.4. Each Mortgagee shall have the right during the same period available to Developer and for an additional thirty (30) days after the expiration of such, (i) to cure or remedy, or to commence to cure or remedy the Event of Default claimed in City's Notice, or (ii) take any actions specified in any City Recommendation. If a Mortgagee shall be required to obtain possession in order to cure any default, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure.

12.4 Reasonable Modifications Required by Mortgagee. City shall meet and confer with any Mortgagee regarding Mortgagee's request for modifications to this Agreement that are reasonable necessary to satisfy Mortgagee's requirements for financing of the Project or any portion thereof and shall accept such modifications provided they: (a) are reasonably required under customary underwriting or rating agency standards; (b) do not materially increase City's obligations or materially diminish the public benefits under this Agreement, and (c) do not materially decrease the Developer's obligations under this Agreement.

ARTICLE XIII

COOPERATION, NON-INTERFERENCE AND GOOD FAITH

13.1 Developer and City shall each refrain from doing anything that would render its performance under this Agreement impossible and each shall do everything which this Agreement contemplated that the Party shall do to accomplish the objectives and purposes of this Agreement.

13.2 Developer and City each covenant, on behalf of itself and its successors, heirs and assigns, to take all actions and to do all things, and to execute, with acknowledgement or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

ARTICLE XIV

MISCELLANEOUS

14.1 Binding Covenants. Pursuant to Section 65868.5 of the Development Agreement Statute, this Agreement shall constitute covenants which shall run with those portions of the Property against which it is recorded as specified in Section 2.1 and the benefits and burdens hereof shall bind and inure to all successors and assigns of the Parties.

14.2 Public Good. City hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety and general welfare and is consistent with the General Plan and the Specific Plan.

14.3 Negation of Partnership. It is specifically understood and agreed by and between the Parties hereto that the development of the Property is a separately undertaken private development. No partnership, joint venture or other association of any kind between Developer and City is formed by this Agreement.

14.4 No Third Party Beneficiary. This Agreement is entered into for the protection and benefit of the Parties and their successors and assigns. No other person or entity of any kind or nature shall have or acquire any right or action of any kind based on the provisions of this Agreement.

14.5 Exhibits. The Exhibits listed below are deemed incorporated into this Agreement in their entirety by this reference except as otherwise provided herein:

Exhibit A: Legal Description of Property
Exhibit A-1: Plat of Property
Exhibit B: Legal Description of City Easement Property
Exhibit B-1: Plat of City Easement Property
Exhibit C: Project Site Plan
Exhibit D: List of Project Approvals
Exhibit E: Form of Easement for Improvements in City Right of Way
Exhibit F: Development Phases
Exhibit G: Airport Boulevard Dedication Parcel
Exhibit H: Developer Maintenance Areas

14.6 Entire Agreement. This written Agreement and the Exhibits hereto as specified in Section 14.5 contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof.

14.7 Construction of Agreement; Captions. All of the provisions of this Agreement have been negotiated at arms-length between the Parties and after advice by counsel and other representatives chosen by each Party, and the Parties are fully informed with respect thereto. Therefore, this Agreement shall not be construed for or against either Party by reason of the authorship or alleged authorship of any provisions hereof, or by reason of the status of either Party. The provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party and consistent with the provisions hereof, in order to achieve the objectives and purpose of the Parties hereunder. The captions preceding the text of each Article, Section and the Table of Contents hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

14.8 Severability. Except as is otherwise specifically provided for in this Agreement with respect to any Laws which conflict with this Agreement, if any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of this Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

14.9 Mitigation of Damages. In all situations arising out of this Agreement, each Party shall attempt to avoid and minimize the damages resulting from the conduct of the other Party. Each Party shall take all necessary measures to effectuate the provisions of this Agreement.

14.10 Irregularity in Proceeding. No action, inaction or recommendation by a Party pursuant to this Agreement, or of City in connection with a City Approval, shall be held void or invalid, or be set aside by a court on the grounds of improper admission or rejection of evidence, or by reason of any error, irregularity, informality, neglect or omission (collectively, an "error") as to any matter pertaining to petition, application, notice, finding, record, hearing, report, recommendation or any matters of procedure whatsoever, unless after an examination of the entire record with respect to such error, including the evidence, the court finds that the error complained of was prejudicial, and that by reason of the error, the complaining Party, or third

person, sustained and suffered substantial injury, and that a different result would have been probable if the error had not occurred or existed. No presumption shall arise that an error is prejudicial, or that injury resulted from an error, solely as a result of a showing that error occurred.

14.11 Applicable Law. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the laws of the State of California.

14.12 Authorized Signatories; Signature Pages. The Parties warrant that the persons executing and delivering this Agreement are authorized to execute and deliver this Agreement on behalf of each Party, respectively. For convenience, the signatures of the Parties to this Agreement may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

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

14.14 Days. The word "days" as used in this Agreement refers to calendar days. In the event that any period to perform an obligation or notice period under this Agreement ends on a Saturday, Sunday, or state or national holiday, the applicable time period shall be extended to the next business day.

14.15 Estoppel Certificate. Developer may, at any time, and from time to time, deliver written notice to the City requesting City to certify in writing that, to the knowledge of City, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) the Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (c) that Developer is not in default in the performance of its obligations under the Agreement, or if in default, to describe therein the nature and amount of any such defaults. City agrees to cooperate with Developer and to timely process such request in good faith and return same within ten (10) days of receipt. Either the Director of Community Development or the Planning Director of City shall have the right to execute any certificate requested by Developer hereunder.

Signatures commence on following page

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

AUTHORIZED SIGNATURE OF CITY TO AGREEMENT:

CITY OF BURLINGAME, a municipal corporation
organized and existing under the laws of the State
of California

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____

Clark E. Guinan

Its: City Attorney

**AUTHORIZED SIGNATURE OF DEVELOPER TO
AGREEMENT:**

350 Beach Road, LLC, a Delaware corporation

By: _____

Its: _____

Exhibit A

Legal Description of Property

Parcel One:

A portion of the Northerly half of Section 18, Township 4 South, Range 4 West, Mount Diablo Base and Meridian, described as follows:

Beginning at a point which is due North 540.68 feet and due West 84.00 feet from the intersection of the centerline of the centerline of Burlingame Avenue and the centerline of the six foot right of way along the beach deeded to the City of San Mateo; thence from said point of beginning West 411.00 feet; thence South 150.00 feet; thence West 120.00 feet; thence North 150.00 feet; thence West 394.26 feet; thence North 0° 17' 00" West 729.01 feet; thence East 928.86 feet; thence South 729.00 feet to said point of beginning.

Parcel Two:

All that portion of Parcel 1, as said parcel is shown on that certain Map entitled, " Parcel Map City of Burlingame, San Mateo County, California, dated January 1969" , filed in the Office of the County Recorder of San Mateo County, State of California on October 1, 1969 in Book 8 of Parcel Maps, at Page 33, lying Southerly of the Southerly line of that portion conveyed to the State of California, acting by and through the State Lands Commission, dated July 18, 1972 and recorded July 27, 1972, in Book 6198 at Page 76 as Document No. 41774-AF, Official Records.

Parcels One and Two being Assessor' s Parcel No.: 026-350-130

EXHIBIT A-1 PLAT OF PROPERTY

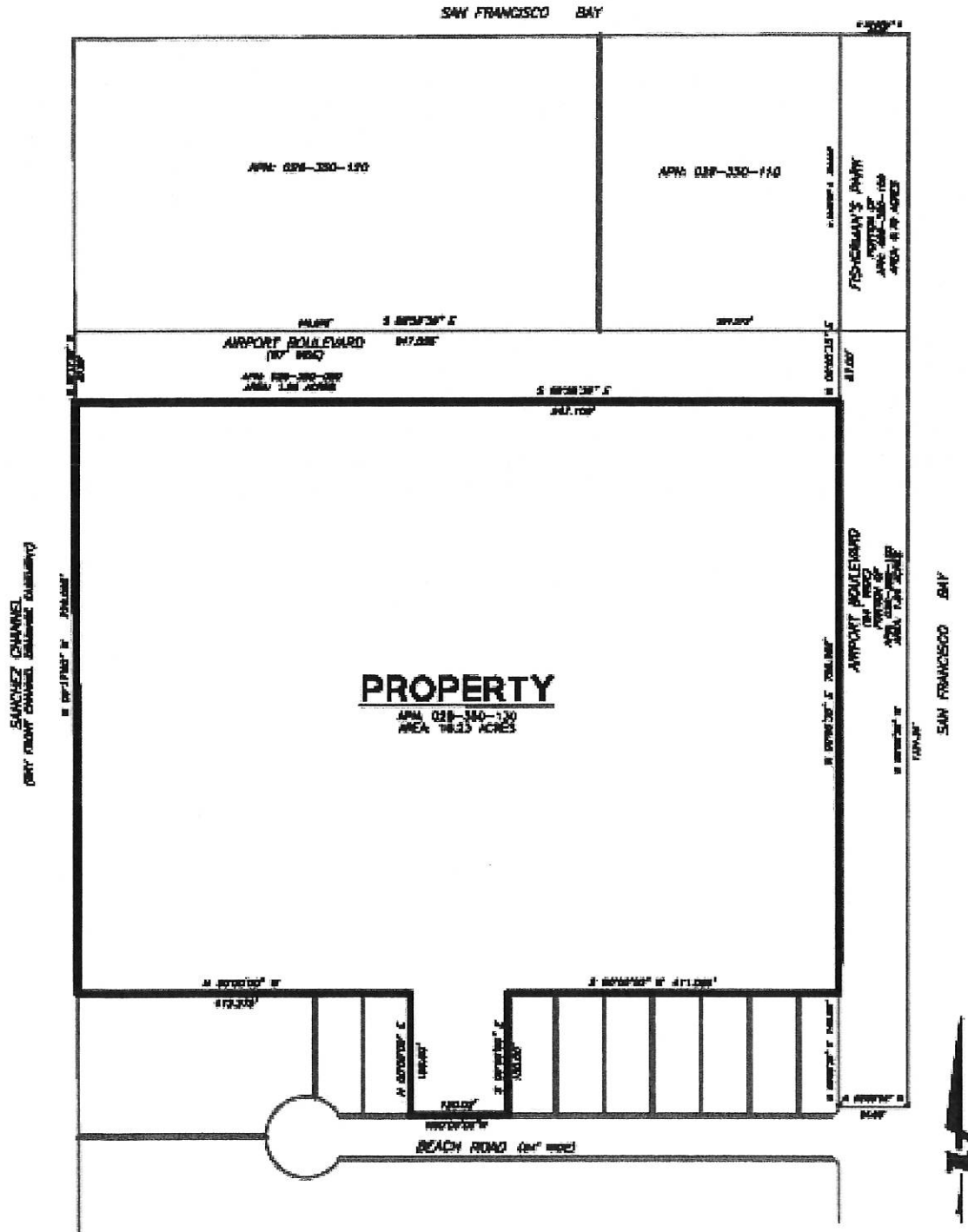


Exhibit B

Legal Description of City Easement Property

Parcel One:

A portion of Section 18, Township 4 South, Range 4 West, Mount Diablo Base & Meridian, described as follows:

Commencing at the point of intersection of the north line of said Section 18 with the east line of Parcel 3, as said parcel is shown on that certain Parcel Map filed for record on October 1, 1969 in Volume 8 of Parcel Maps at Page 33, Records of San Mateo County, California; thence from said point of commencement along the north line of said Section 18, South 89° 43' 01" West 84.00 feet to a point which is perpendicularly distant 84.00 feet from said easterly line of Parcel 3; thence parallel with said easterly line South 0° 00' 00" East 364.84 feet to a point in the northerly line of that parcel shown as " 87' wide street dedication" on said Parcel Map, said point of beginning along the northerly line of said " 87' wide street dedication" Parcel North 90° 00' 00" West 947.29 feet to the westerly line of Parcel One as shown on said Parcel Map; thence along said westerly line South 0° 17' 00" East 87.00 feet to the southerly line of said " 87' wide street dedication" Parcel, thence along said southerly line North 90° 00' 00" East 946.86 feet to a point which bears South 0° 00' 00" East from said true point of beginning; thence North 0° 00' 00" East 87.00 feet to the true point of beginning.

Being a portion of Parcels 1, 2 and 3, as shown on the above mentioned Parcel Map.

Assessor's Parcel No. 026-350-080

Parcel Two:

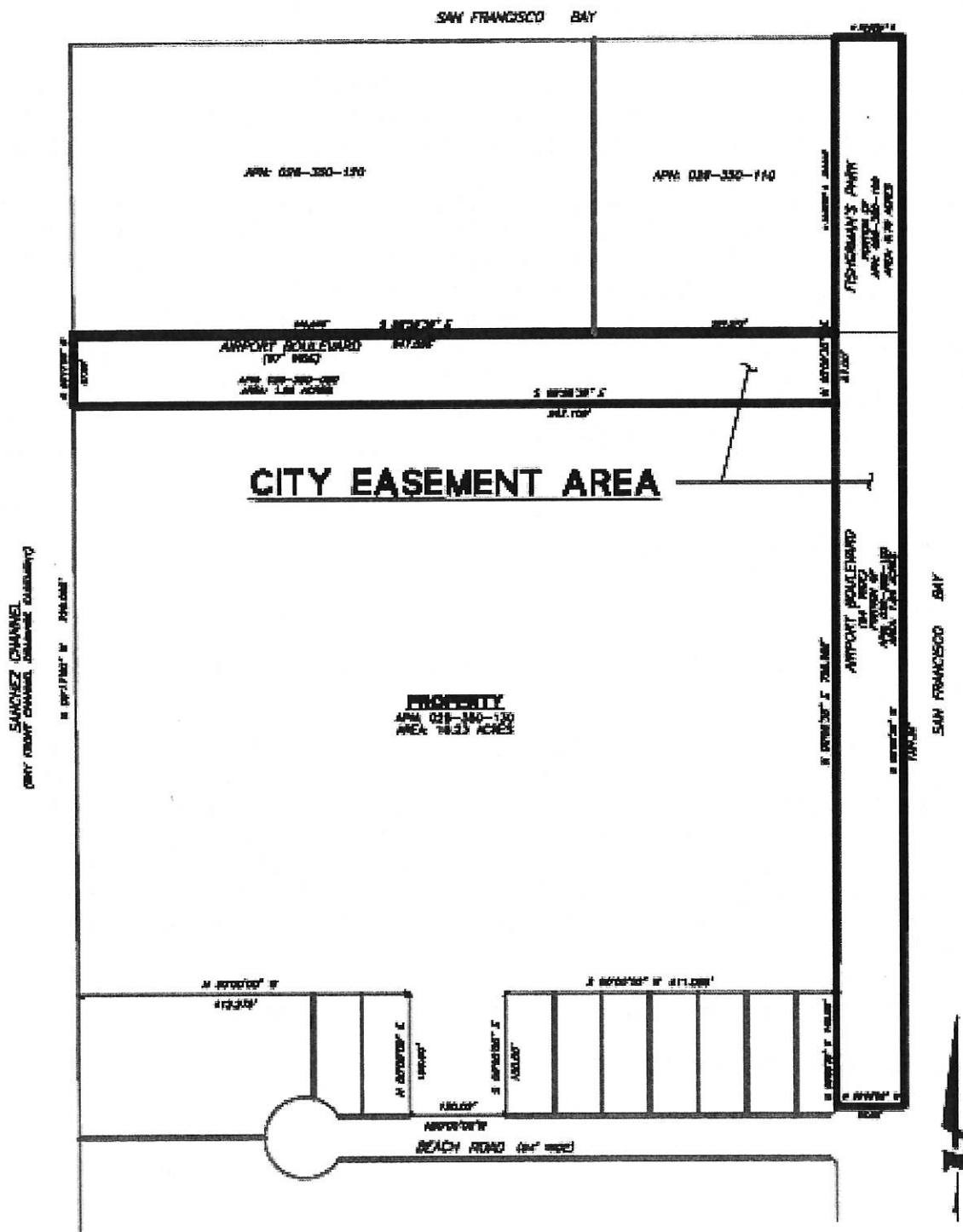
A portion of Section 18, Township 4 South, Range 4 West, Mount Diablo Base & Meridian, described as follows:

Beginning at the point of intersection of the north line of said Section 18 with the east line of Parcel 3 as said parcel is shown on that certain parcel map filed for record October 1, 1969 in Volume 8 of Parcel Maps at Page 33, Records of San Mateo County, California; thence from said point of beginning along the exterior line of said Parcel 3 the following courses: South 0° 00' 00" East 1321.26 feet, North 90° 00' 00" West 84.00 feet and North 0° 00' 00" East 869.00 feet; thence leaving said exterior line North 0° 00' 00" East 451.85 feet to a point in the northerly line of said Parcel 3; thence along said northerly line North 89° 43' 01" East 84.00 feet to the point of beginning.

Being a portion of Parcel 3, as shown on the above mentioned Parcel Map

Assessor's Parcel No. 026-350-100

EXHIBIT B-1 PLAT OF CITY EASEMENT AREA



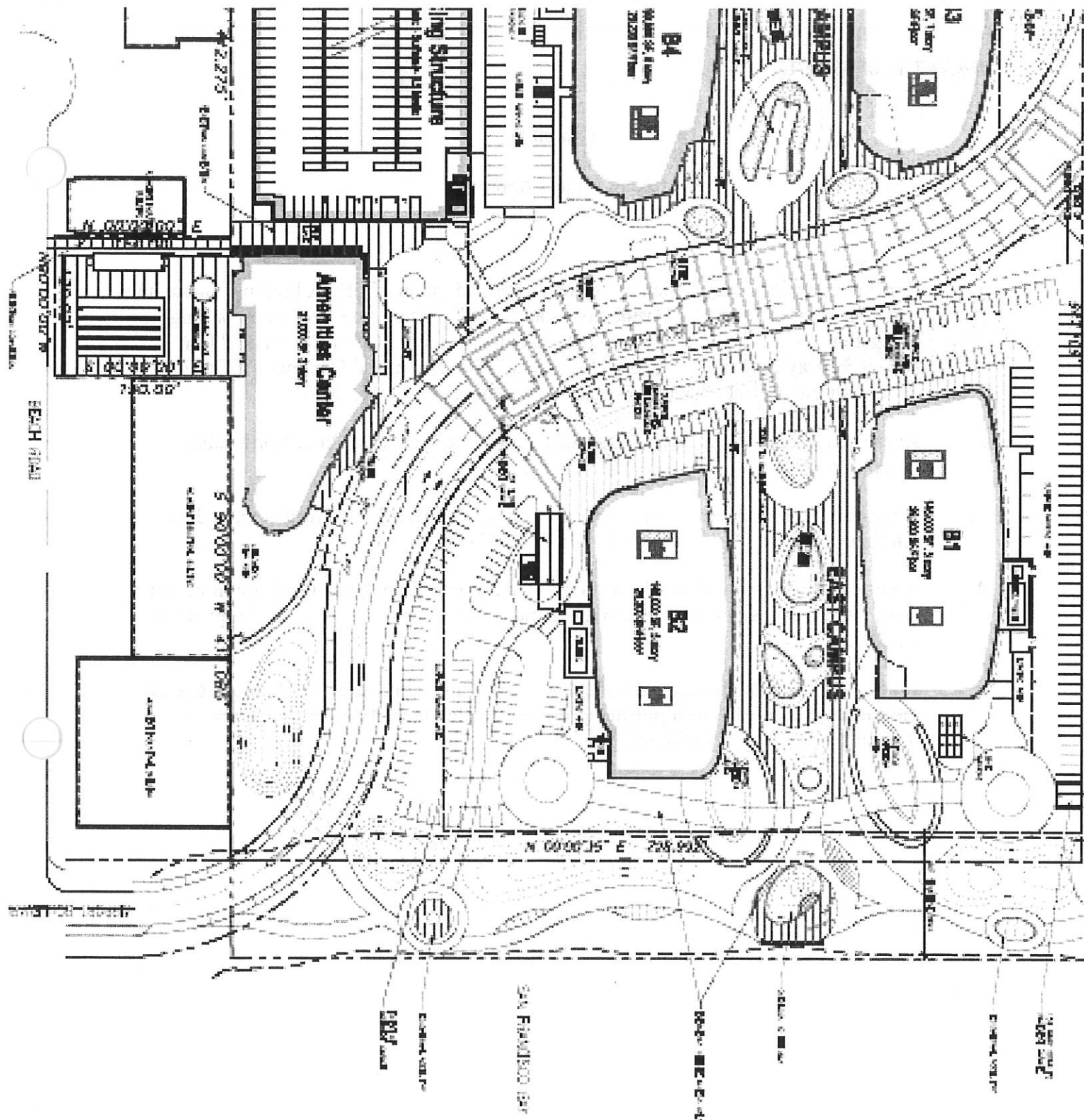


Exhibit D

List of Project Approvals

1. Certification of an Environmental Impact Report, adoption of CEQA Findings (including a Statement of Overriding Considerations and Conditions of Approval incorporating Mitigation Monitoring and Reporting provisions), and approval of Conditional Use Permit for Day Care use, vesting tentative subdivision map, and Commercial Design review for the Project (Resolution No. _____, adopted June 18, 2012).
2. Approval of Amendment to Bayfront Specific Plan for the Anza Point North subarea (Resolution No. _____, adopted June 18, 2012)
3. Approval of Amendment to Zoning Code Text for the Anza Point North zoning district (Ordinance No. _____, adopted June 18, 2012)
4. Approval of reclassification of a portion of the Property from Anza Point South zoning district to the Anza Point North zoning district (Ordinance No. _____, adopted June 18, 2012)
5. Approval of a Development Agreement (including amendments to the Zoning Code for the administration of Development Agreements within the City of Burlingame) (Ordinance No. _____, adopted June 18, 2012)

Exhibit E

Form of Easement for Improvements on City Easement Property

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Coblentz, Patch, Duffy & Bass LLP
One Ferry Building, Suite 200
San Francisco, CA 94111-4213
Attn: Joshua Steinhauer

**EASEMENT AGREEMENT
(Construction and Maintenance Easement)**

This Easement Agreement ("**Agreement**") is dated _____ ("**Effective Date**") and is made by and between the CITY OF BURLINGAME, a municipal corporation organized and existing under the laws of the State of California (herein "**Grantor**") and 350 BEACH ROAD, LLC, a Delaware corporation (herein "**Grantee**"), with reference to the following facts:

A. Grantor owns an easement for public road, utility and related purposes over certain lands in the City of Burlingame, California more particularly described in Exhibit A and depicted on Exhibit A-1. (the "**Grantor Easement Property**").

B. Currently, Fisherman's Park and a portion of Airport Boulevard are located on the Grantor Easement Property;

C. The Grantee is the owner of certain real property adjacent to the Grantor Easement Property, more particularly described in Exhibit B and depicted on Exhibit B-1 (the "**Benefited Property**").

D. Grantee wishes to develop the Benefited Property into an office/research and development campus, as well as make certain improvements on portions of the Grantor Easement Property, including relocating Airport Boulevard including expansion of the existing bridge crossing Sanchez Channel, constructing a new portion of the San Francisco Bay Trail through a portion of the Grantor Easement Property, and other public shoreline and open space improvements.

E. Grantor and Grantee have entered into that certain development agreement under Government Code § 65864 *et seq.* approved by the Grantor on _____, 2012 by Ordinance No. _____ ("**Development Agreement**") for the improvement of the Benefited Property and portions of the Grantor Easement Property (improvements to and on the Grantor Easement Property and Benefited Property referred to collectively herein as the "**Project**" as that term is defined in the Development Agreement and as is shown on the site plan attached hereto as Exhibit C). Under the Development Agreement, Grantor has agreed to grant Grantee an easement over a portion of the Grantor Easement Property described more particularly below as

the Easement Area, for the construction, installation, use, repair and maintenance of Project improvements to and on the Easement Area.

F. This Agreement, including the easement granted herein, is being executed and delivered by Grantor and Grantee for the benefit of the Benefited Property to accommodate the development of the Project.

NOW, THEREFORE, for valuable consideration, the receipt of which each of the parties hereto does hereby acknowledge, the parties hereto do hereby agree as follows:

1. Grant of Easement. Subject to the provisions of this Agreement, Grantor hereby grants to Grantee a nonexclusive easement (the "**Easement**") for ingress and egress on, over, under and upon the Grantor's Easement Property for the construction, installation, repair, reconstruction, reinstallation and maintenance of certain improvements on a portion of the Grantor's Easement Property depicted on Exhibit D (the "**Easement Area**"), as more particularly described in Section 4 below.

2. Term of Easement. The Easement granted under this Agreement shall commence ten (10) days after Grantor's receipt of Grantee's notice of the estimated date of commencement of the work of constructing improvements on the Easement Area and shall run for so long as the Project improvements remain on the Benefited Property. Upon the termination of the Easement, Grantee shall promptly, upon Grantor's request, cause to be executed, acknowledged and delivered on behalf of Grantee to Grantor, a quitclaim deed to evidence such termination.

3. Condition of the Easement Area. Grantee accepts the Easement Area in its existing physical condition, without warranty as to its suitability for Grantee's purposes.

4. Improvements. Grantee seeks this Easement to construct, install, repair, reconstruct, reinstall and maintain, in accordance with this Agreement, all improvements identified as part of or contemplated uses in the Project under the Development Agreement, including without limitation: (1) the relocated and improved portion of Airport Boulevard on the Easement Area, including a new spur road for access to Fisherman's Park, together with relocation of existing and placement of new utilities within the road right of way and associated roadside landscaping and streetscape improvements; (2) extension of the San Francisco Bay Trail and associated trails through the Easement Area to connect with and extend existing portions of the Bay Trail offsite, (3) other shoreline improvements for the within the Easement Area, including open space areas, flood protection and passive stormwater treatment improvements, all as depicted in greater detail on Exhibit C.

5. Indemnification.

(a) Generally. Grantee shall indemnify, defend and hold Grantor, its officers, directors, shareholders, employees, agents, successors and assigns (hereinafter collectively called "**Indemnified Parties**") harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Grantee's operations upon the Easement Area under this Agreement, whether such operations be by Grantee, or by any of Grantee's contractors, subcontractors, or by any one or more persons employed by, or acting as

agent for, Grantee or any of Grantee's contractors or subcontractors, excepting suits and actions brought by Grantee for default of this Agreement or arising from the negligence or willful misconduct of any of the Indemnified Parties.

(b) Legal Challenge; Cooperation. In the event of any legal action instituted by a third party challenging any provision of this Agreement, the procedures leading to its adoption, or its implementation, the Grantor and Grantee agree to affirmatively cooperate in defending said action and, if necessary, execute a joint defense and confidentiality agreement to share and protect information under the joint defense privilege recognized under applicable law. As part of their cooperation in defending an action, Grantor and Grantee shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information.

(c) Attorney's Fees and Costs. Grantee's obligation under this Section 6 includes the obligation to pay for the costs and reasonable attorneys' fees of Grantor and any outside counsel retained by Grantor to defend it in any court action, administrative action or other proceeding brought by any third party challenging any provision of this Agreement, the procedures leading to its adoption, or its implementation. In the event Grantor elects to select and employ independent defense counsel, Grantee may jointly participate in and reasonably approve such selection. In the event that Grantor elects for Grantee to defend an Indemnified Party with counsel designated by Grantee, then such counsel shall be reasonably acceptable to Grantor. If Grantee is obligated to indemnify an Indemnified Party under this Section 5, Grantee, the Grantor's City Attorney and any outside counsel shall fully coordinate and cooperate in the defense of any action and shall keep each other fully informed of all developments relevant to such indemnity.

6. Amendment. This Agreement may be amended or otherwise modified only in writing signed and acknowledged by Grantor and Grantee, or the successors and assigns of each.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be entitled to be the original and all of which shall constitute one and the same agreement.

9. Notice. Any notice given under this Agreement shall be in writing and given by delivering the notice in person or sent by first class, postage prepaid, certified mail, addressed as follows:

Grantor: Director of Community Development
 City of Burlingame
 501 Primrose Road
 Burlingame, CA 94010

with a copy to: City Attorney

City of Burlingame
501 Primrose Road
Burlingame, CA 94010

Grantee: 350 Beach Road, LLC
c/o Millennium Partners
735 Market Street, Sixth Floor
San Francisco, CA 94103

All notices required by this Agreement shall be deemed given, received, made or communicated (i) if by personal service, on the date personal receipt actually occurs or, (ii) if mailed, on the delivery date or attempted delivery date shown on a return receipt. Any party may change the address stated herein by giving notice thereof to the other party at least ten (10) days prior to the effective date of the address change, and thereafter notices shall be addressed and transmitted to the new address. Notices and communications with respect to technical matters in the routine performance and administration of this Agreement shall be given by or to the appropriate representative of a Party by such means as may be appropriate to ensure adequate communication of the information, including written confirmation of such communication where necessary or appropriate.

10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and be binding upon and inure to the benefit of the parties' respective successors and assigns, including without limitation all grantees and other successors-in-interest of Grantor in any of the Easement Area and of Grantee in the Benefited Property.

11. Representations and Warranties. This Agreement has been duly authorized by all necessary action on the part of Grantor and no other action on the part of Grantor is necessary to authorize the execution and delivery of this Agreement.

12. No Dedication. The provisions of this Agreement are for the exclusive benefit of the parties and their successors and assigns, and shall not be deemed to confer any rights upon any person except such parties and their successors and assigns.

13. No Third Party Beneficiary. No obligation of a party under this Agreement is enforceable by, or is for the benefit of, any other third parties. The provisions of this Agreement are for the exclusive benefit of the parties hereto and their respective successors and assigns and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person.

14. Severability. If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the full extent permitted by law, provided the material provisions of this Agreement can be determined and effectuated.

15. Entire Agreement. This Agreement, together with the Development Agreement and any attachments hereto or inclusions by reference, constitute the entire agreement between

the parties on the subject matter hereof, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties hereto with respect to the easement which is the subject matter of this Agreement.

16. Easement to Run with the Land. The conditions set forth in this Agreement are covenants running with the land and the title to the Grantor Easement Property and the Benefited Property, and any portions thereof. The Easement Area shall be burdened by the Easement created by this Agreement, which burden shall run with the land and shall be binding on any future owners and encumbrancers of the Easement Area or any part thereof and their successors and assigns.

17. Survival. All representations, warranties, waivers, and indemnities given or made hereunder shall survive termination of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the Effective Date.

GRANTOR:

AUTHORIZED SIGNATURE OF CITY TO AGREEMENT:

CITY OF BURLINGAME, a municipal corporation
organized and existing under the laws of the State
of California

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____

Clark E. Guinan

Its: City Attorney

GRANTEE:

AUTHORIZED SIGNATURE OF DEVELOPER TO
AGREEMENT:

350 Beach Road, LLC, a Delaware corporation

By: _____

Its: _____

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

(Seal)

STATE OF CALIFORNIA)
) ss
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Notary Public

(Seal)

Exhibit A
Legal Description of Grantor Easement Property

Legal Description of City Easement Property

Parcel One:

A portion of Section 18, Township 4 South, Range 4 West, Mount Diablo Base & Meridian, described as follows:

Commencing at the point of intersection of the north line of said Section 18 with the east line of Parcel 3, as said parcel is shown on that certain Parcel Map filed for record on October 1, 1969 in Volume 8 of Parcel Maps at Page 33, Records of San Mateo County, California; thence from said point of commencement along the north line of said Section 18, South 89° 43' 01" West 84.00 feet to a point which is perpendicularly distant 84.00 feet from said easterly line of Parcel 3; thence parallel with said easterly line South 0° 00' 00" East 364.84 feet to a point in the northerly line of that parcel shown as "87' wide street dedication" on said Parcel Map, said point of beginning along the northerly line of said "87' wide street dedication" Parcel North 90° 00' 00" West 947.29 feet to the westerly line of Parcel One as shown on said Parcel Map; thence along said westerly line South 0° 17' 00" East 87.00 feet to the southerly line of said "87' wide street dedication" Parcel, thence along said southerly line North 90° 00' 00" East 946.86 feet to a point which bears South 0° 00' 00" East from said true point of beginning; thence North 0° 00' 00" East 87.00 feet to the true point of beginning.

Being a portion of Parcels 1, 2 and 3, as shown on the above mentioned Parcel Map.

Assessor's Parcel No. 026-350-080

Parcel Two:

A portion of Section 18, Township 4 South, Range 4 West, Mount Diablo Base & Meridian, described as follows:

Beginning at the point of intersection of the north line of said Section 18 with the east line of Parcel 3 as said parcel is shown on that certain parcel map filed for record October 1, 1969 in Volume 8 of Parcel Maps at Page 33, Records of San Mateo County, California; thence from said point of beginning along the exterior line of said Parcel 3 the following courses: South 0° 00' 00" East 1321.26 feet, North 90° 00' 00" West 84.00 feet and North 0° 00' 00" East 869.00 feet; thence leaving said exterior line North 0° 00' 00" East 451.85 feet to a point in the northerly line of said Parcel 3; thence along said northerly line North 89° 43' 01" East 84.00 feet to the point of beginning.

Being a portion of Parcel 3, as shown on the above mentioned Parcel Map

Assessor's Parcel No. 026-350-100

Exhibit A-1
Plat of Grantor Easement Property

Exhibit B
Legal Description of Benefited Property

Parcel One:

A portion of the Northerly half of Section 18, Township 4 South, Range 4 West, Mount Diablo Base and Meridian, described as follows:

Beginning at a point which is due North 540.68 feet and due West 84.00 feet from the intersection of the centerline of the centerline of Burlingame Avenue and the centerline of the six foot right of way along the beach deeded to the City of San Mateo; thence from said point of beginning West 411.00 feet; thence South 150.00 feet; thence West 120.00 feet; thence North 150.00 feet; thence West 394.26 feet; thence North 0° 17' 00" West 729.01 feet; thence East 928.86 feet; thence South 729.00 feet to said point of beginning.

Parcel Two:

All that portion of Parcel 1, as said parcel is shown on that certain Map entitled, " Parcel Map City of Burlingame, San Mateo County, California, dated January 1969" , filed in the Office of the County Recorder of San Mateo County, State of California on October 1, 1969 in Book 8 of Parcel Maps, at Page 33, lying Southerly of the Southerly line of that portion conveyed to the State of California, acting by and through the State Lands Commission, dated July 18, 1972 and recorded July 27, 1972, in Book 6198 at Page 76 as Document No. 41774-AF, Official Records.

Parcels One and Two being Assessor' s Parcel No.: 026-350-130

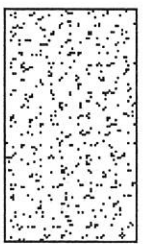
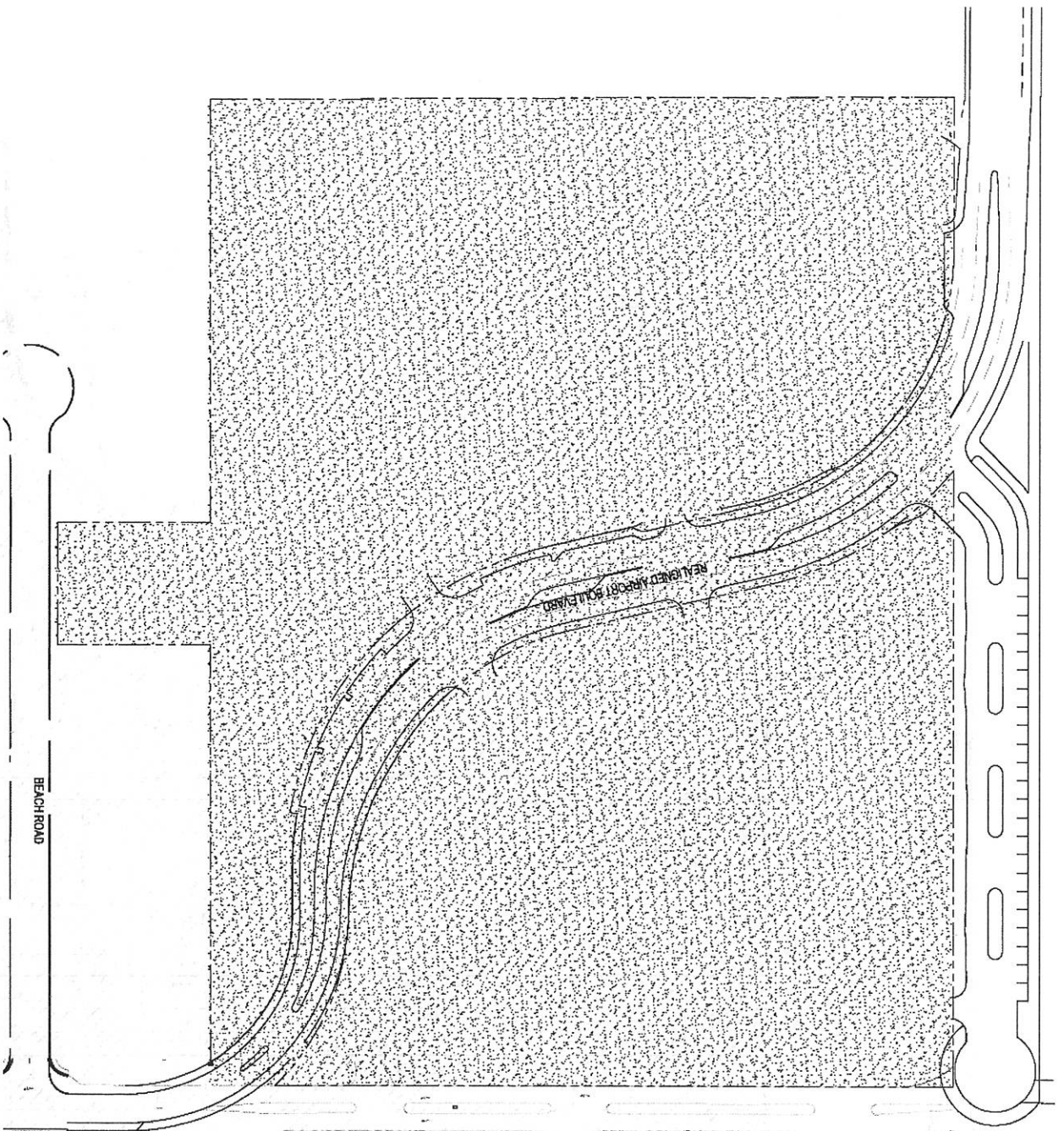
Exhibit B
Plat of Benefited Property

Exhibit C
Site Plan Depicting Project Improvements

Exhibit D
Plat of Easement Area

Exhibit F

Development Phases

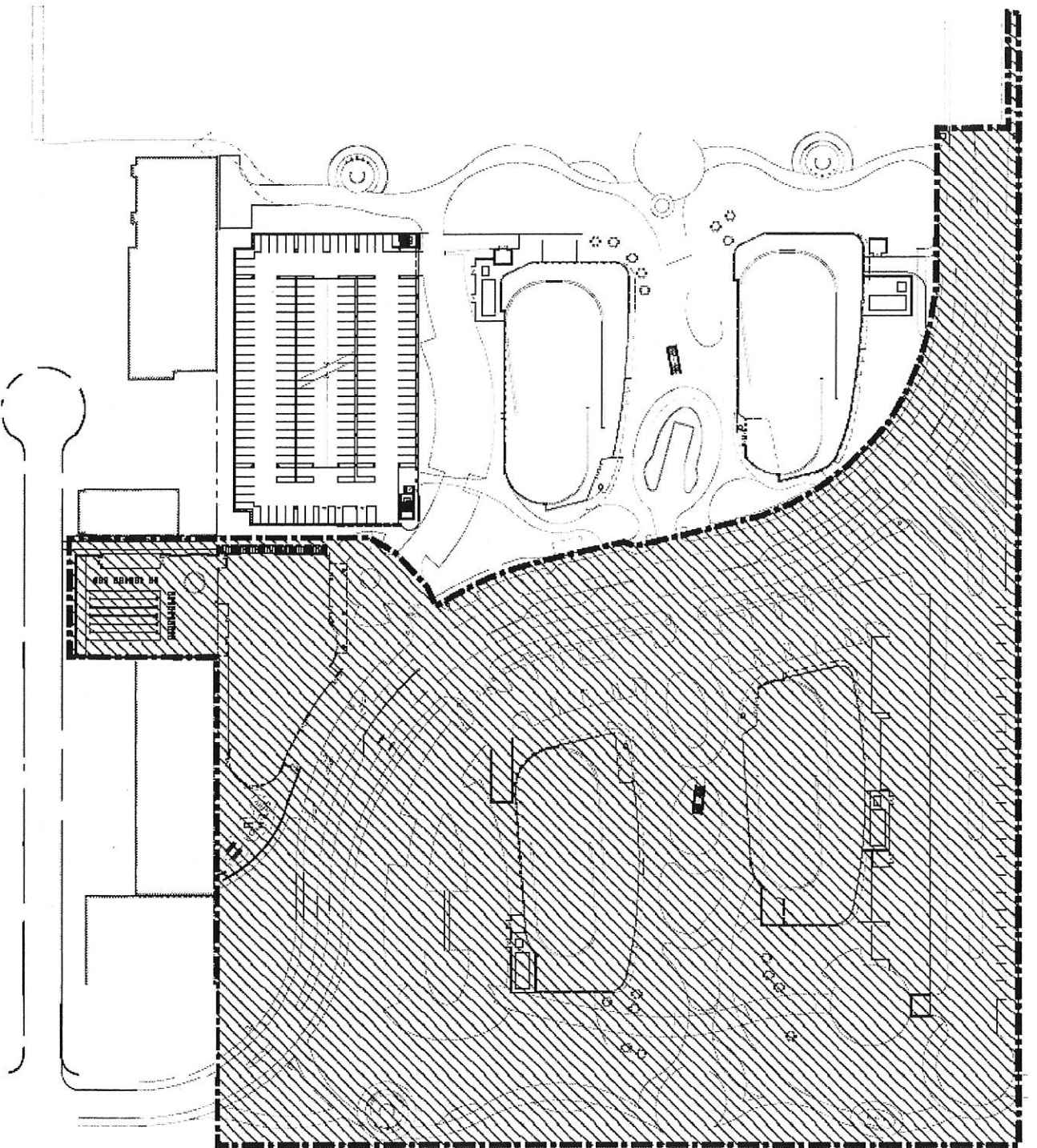


Predevelopment Activities*
(including clearing, grading and
related site preparation work)

* Permits for predevelopment activities do not constitute
"Development Permits" under code section 25.80.010.



EXHIBIT F - DEVELOPMENT PHASES
PREDEVELOPMENT PHASE



DEVELOPMENT PHASE



0' 50' 100' 200'
SCALE: 1" = 100'-0"

EXHIBIT F - DEVELOPMENT PHASES
DEVELOPMENT PHASE ONE

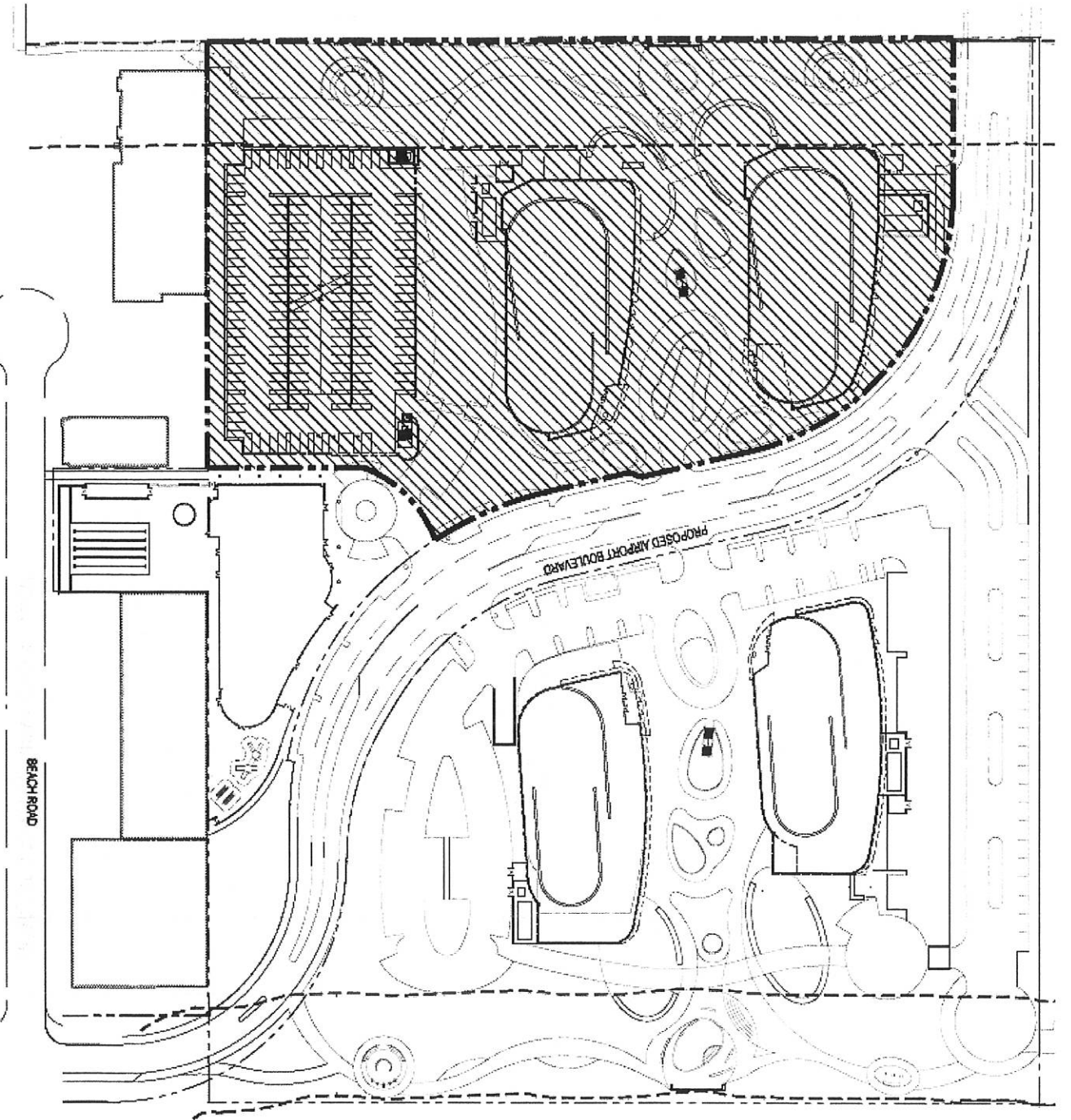
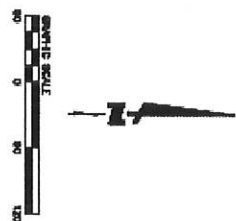


Exhibit G

Airport Boulevard Dedication Parcel



LEGEND



DEDICATION PARCEL

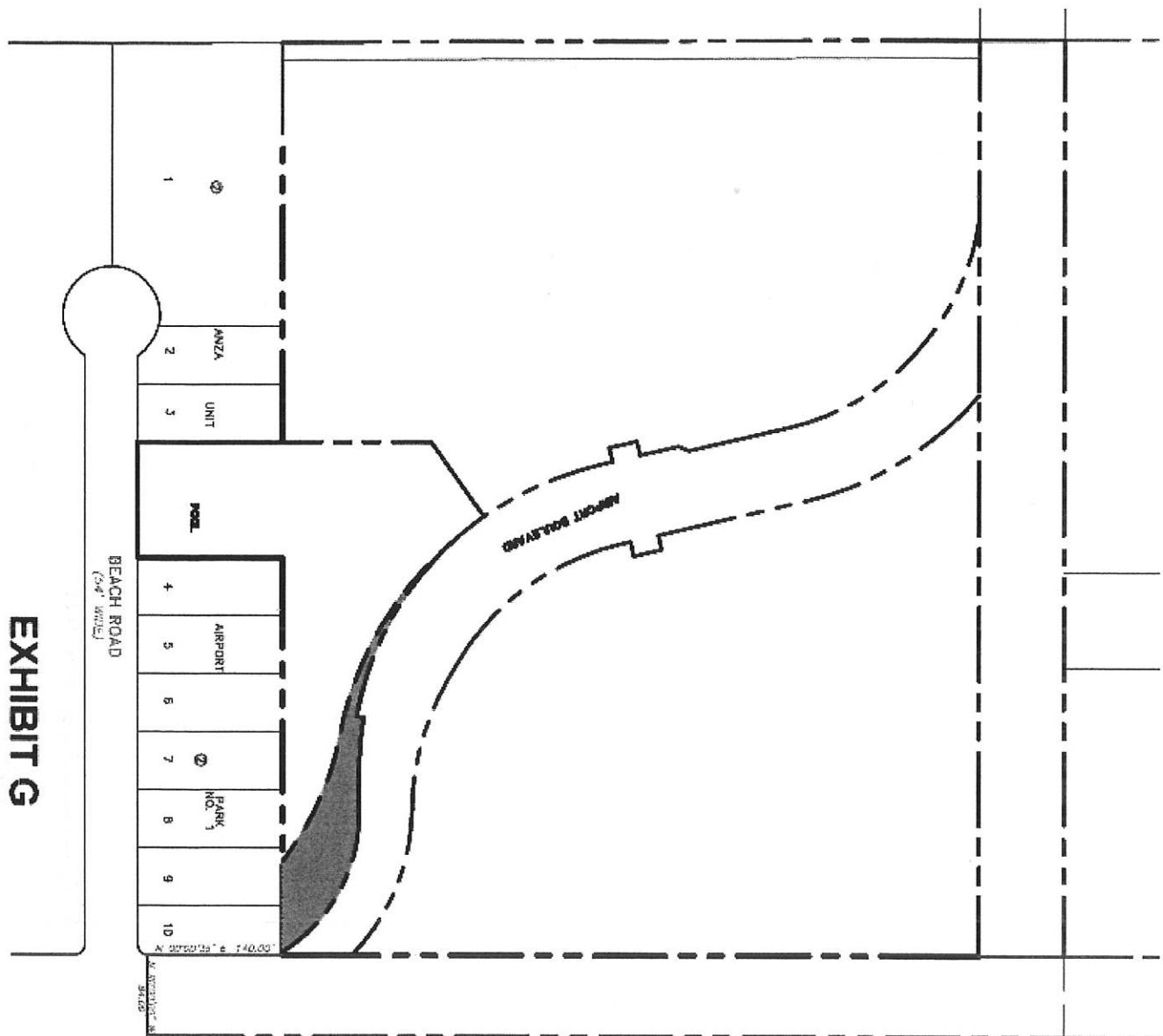


EXHIBIT G

Exhibit H

Developer Maintenance Areas

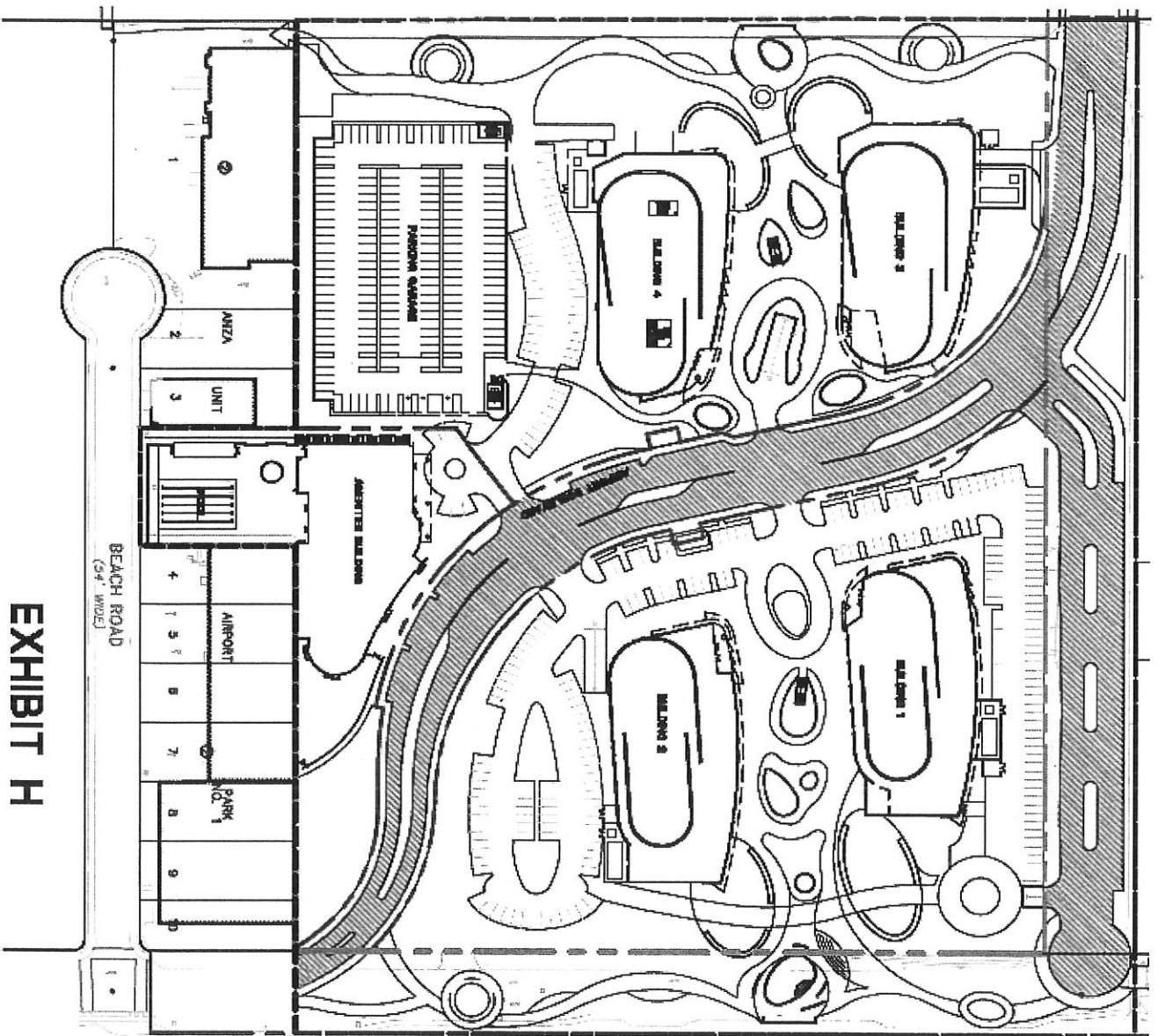





EXHIBIT H

LEGEND

-  TO BE MAINTAINED BY CITY (WITH EXCEPTION OF DECORATIVE PAVING TO BE MAINTAINED BY THE DEVELOPER)
-  TO BE MAINTAINED BY DEVELOPER (WITH EXCEPTION OF SEWER, WATER AND STORM DRAIN INFRASTRUCTURE WITHIN THE PUBLIC RIGHT OF WAY, TO BE MAINTAINED BY THE CITY)
-  LIMIT OF PROJECT IMPROVEMENTS

