

## FIRST AMENDMENT TO INFRASTRUCTURE AGREEMENT

This FIRST AMENDMENT TO INFRASTRUCTURE AGREEMENT ("**First Amendment**") is entered into as of October 1, 2019 by and among the CITY OF ALAMEDA, a municipal corporation ("**City**"), HARBOR BAY ISLE ASSOCIATES, a California general partnership ("**HBIA**"), and the HARBOR BAY BUSINESS PARK ASSOCIATION, a California mutual benefit non-profit corporation ("**HBBPA**").

### RECITALS

A. City, HBIA, HARBOR BAY VILLAGE FOUR ASSOCIATES, a California limited partnership ("**HBVFOUR**"), and HARBOR BAY VILLAGE FIVE ASSOCIATES, a California limited partnership ("**HBVFIVE**"), entered into that certain Infrastructure Agreement dated April 4, 1989, pursuant to which the parties, among other things: (i) identified issues involving traffic and access to Bay Farm Island and Harbor Bay Isle, as well as "**Traffic Improvement Projects**" to mitigate such issues, and (ii) established a "**Traffic Improvement Fund**" to hold the "**Traffic Improvement Taxes**" collected. Terms not otherwise defined in this First Amendment shall have the meaning given to them in the Infrastructure Agreement.

B. HBVFOUR and HBFIVE have completed construction of all homes and related improvements within their respective residential areas of Harbor Bay Isle. HBVFOUR dissolved, and on September 28, 2001, HBVFIVE and HBIA merged, with the surviving entity retaining the HBIA name.

C. HBIA, which was the master developer of Harbor Bay Isle and the Harbor Bay Business Park, is currently winding up its business activities in Harbor Bay Isle and the Harbor Bay Business Park. Accordingly, HBIA desires to assign to HBBPA its rights and obligations under the Infrastructure Agreement, and HBBPA desires to assume such rights and obligations from HBIA.

D. The parties also desire to update the list of Traffic Improvement Projects eligible for funding with Traffic Improvement Funds and make certain other modifications to the Infrastructure Agreement, as further described herein.

NOW, THEREFORE, in consideration of the forgoing, which are incorporated herein by reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City, HBIA and HBBPA agree as follows:

1. **Assignment and Consent to Assignment.** HBIA hereby assigns to HBBPA all of its rights and obligations under the Infrastructure Agreement, as amended hereby. HBBPA hereby accepts and assumes such rights and obligations under the Infrastructure Agreement, as amended hereby. CITY hereby acknowledges such assignment.

2. **Traffic Improvements Projects Eligible for Traffic Improvement Fund.** The original schedule of Traffic Improvement Projects eligible to be funded with Traffic Improvement Funds, as set out on Exhibit A of the Infrastructure Agreement, is deleted in its

entirety and replaced with the list of Traffic Improvement Projects set out on Exhibit A attached to this First Amendment.

3. **Planning and Reporting.** Section 3 of the Infrastructure Agreement shall be deleted in its entirety and replaced with the following: “**Planning and Reporting.** Commencing with City’s fiscal year beginning July 1, 2019, and continuing on an annual basis thereafter, in December or January of each fiscal year, City and HBBPA shall meet and confer (a) regarding potential updates to the schedule of Traffic Improvement Projects eligible to be funded with Traffic Improvement Funds, and (b) to review a report prepared by the City on the amount of Traffic Improvement Funds held in the TIF and the amounts withdrawn from the TIF for Transportation Improvement Projects since the prior meet and confer session; provided that by no later than October 1 of each fiscal year, HBBPA shall deliver a written notice to the City, attention City Engineer and Public Works Director, requesting that such annual meeting occur and that such report be prepared for the meeting. If the parties agree at the meeting to make changes to the schedule of Traffic Improvement Projects, the changes shall be memorialized in a subsequent amendment to the Infrastructure Agreement, the form and substance of which shall be approved by the City.

4. **Delivery of Notices.** Any notice, report, or other communication delivered by a party to another pursuant to this First Amendment shall be deemed delivered when (a) personally served, (b) two (2) business days after such notice is deposited in the United States Mail with postage fully prepaid, or (c) the day following delivery to a nationally recognized overnight courier service, such as FedEx at the addresses set forth below or at such other addresses as the a party may from time to time provide by written notice given pursuant hereto:

To City: The City of Alameda, City Hall, 2263 Santa Clara Avenue, Room 280, Alameda, CA 94501, Attn: City Attorney.

With an Additional Copy to: The City of Alameda, City Hall West, 950 W. Midway Ave., Alameda, CA 94501, Attn: Director of Public Works.

To HBIA: Harbor Bay Isle Associates, Attn: John Martin, President c/o Tim Hoppen, 200 Packet Landing Road, Alameda, CA 94502.

To HBBPA: Harbor Bay Business Park Association, c/o GS Management Company, 5674 Sonoma Drive, Pleasanton, CA 94566; With a copy to Joseph Ernst, srmErnst Development Partners, 2220 Livingston Street, Suite 208, Oakland, CA 94606.

5. **Confirmation of Binding Effect of Remaining Sections of Infrastructure Agreement.** Except for changes described in this First Amendment, all the other terms and conditions of the Infrastructure Agreement, shall remain in full force and effect.

[Signatures on subsequent page.]

IN WITNESS WHEREOF, this First Amendment is executed by persons authorized to represent the respective party:

CITY OF ALAMEDA, a municipal corporation

By: \_\_\_\_\_

Eric J. Levitt, City Manager

APPROVED AS TO FORM:

City Attorney

By: \_\_\_\_\_

Lisa Nelson Maxwell, Assistant City Attorney

HARBOR BAY ISLE ASSOCIATES, a California general partnership

By: Doric Realty, Inc., a California corporation, Its Managing General Partner

By: \_\_\_\_\_

John Martin, President

HARBOR BAY BUSINESS PARK ASSOCIATION, a California mutual benefit non-profit corporation

By: \_\_\_\_\_

Joseph Ernst, President

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By: \_\_\_\_\_

John Martin, President

HARBOR BAY BUSINESS PARK ASSOCIATION, a California mutual benefit non-profit corporation

By: \_\_\_\_\_

  
Joseph Ernst, President

## **EXHIBIT A**

### **UPDATED SCHEDULE OF TRAFFIC IMPROVEMENT PROJECTS – 2019**

Group 1 – 50 % of City costs from Traffic Improvement Fund: None.

Group 2 – 100% of City costs from Traffic Improvement Fund:

1. Signalization or other intersection control as determined to be needed on Bay Farm Island by the City Engineer;
2. Transportation systems management programs for Bay Farm Island, including, without limitation payment of up to \$500,000 to the San Francisco Bay Area Water Emergency Transportation Authority (“WETA”) pursuant to Section 11.2 (a)(i) of that certain Ferry Service Operations Transfer Agreement, dated February 25, 2011, between the City of Alameda, Alameda Reuse and Redevelopment Authority and WETA with respect to WETA’s operation of the Harbor Bay Ferry Terminal at Bay Farm Island.
3. Maintenance and repair of landside improvements at Harbor Bay Ferry Terminal; and
4. Expansion of shuttle bus service connecting businesses in the Harbor Bay Business Park to and from the Harbor Bay Ferry Terminal, to the Harbor Bay Landing Center, to the South Shore Shopping Center and to any Park and Ride lots provided in the vicinity.