

**Recording Requested By:
The City of Alameda**

**When recorded, return to:
City of Alameda
Public Works Department
Gail Carlson
950 West Mall Square, Room 110
Alameda, CA 94501**

NAME OF DOCUMENT

Document Exempt from Recording Fee: Government Code Section 6103

AGREEMENT

(SUBDIVISION IMPROVEMENT AGREEMENT)

This Agreement is made by and between the City of Alameda, a municipal corporation in the County of Alameda, State of California, hereinafter called "City," and TL Partners I, LP, a California limited partnership, hereinafter called "Developer" and dated this ____ day of _____, 2016.

WITNESSETH:

WHEREAS, Developer is in possession of a tract of land lying in the City of Alameda, County of Alameda, State of California, known as Tract **8254**, hereinafter called "Subdivision"; and more particularly described in Exhibit "A" attached hereto; and

WHEREAS, the Tentative Map of the Tract 8254 was approved with conditions by the City Council on **July 21, 2015**, which conditions are on file in the Public Works Department and incorporated herein by this reference; and

WHEREAS, the City and the Developer entered into a Development Agreement ("DA") for the Del Monte Warehouse Project on January 15, 2015, and the DA states that prior to filing its final subdivision map, Developer and City shall execute a Subdivision Improvement Agreement that is not inconsistent with the DA and satisfies the requirements of the Subdivision Map Act.

WHEREAS, the Final Map of the Subdivision has been reviewed by the City's Public Works and Planning Directors and found to be in compliance with the approved Tentative Map; and

WHEREAS, State Subdivision Map Act (Government Code Section 66410, et. seq.) (the

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"Map Act") and Chapter 30 of the Alameda Municipal Code require the execution of this Agreement relating to improvements required to be hereinafter constructed prior to the approval by the City Council of the Final Map.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained, the parties hereto mutually agree as follows:

1. Construction Obligation:

a. Developer agrees at Developer's sole cost and expense to cause all improvements identified in the conditions to the approval of the Subdivision to be made and completed to the City's satisfaction within two (2) years from the date City has executed this Agreement. A copy of such conditions is on file in the Public Works Department.

b. No extension of time shall be made except upon the basis of a written application made by Developer to the Public Works Director stating fully the grounds of the application and facts relied upon for such an extension. Any extension may be conditioned upon an increase in security and inspection fees to reflect current costs. Neither such extension nor other delay by City shall constitute a waiver of any of the obligations of Developer or Developer's surety.

2. Easements and Permits: Developer shall, at Developer's sole cost and expense: a) provide any and all rights of way and easements which may be necessary or convenient for the Subdivision and its required improvements; b) obtain all necessary permits and licenses for the construction of the required improvements; c) give all necessary notices; and d) pay all fees and taxes required by law.

3. Performance of the Work: Construction shall commence within a reasonable time. Developer agrees to perform the work of construction of all improvements for the Subdivision in a workmanlike and professional manner, in accordance with all requirements of State and local law, including the Alameda Municipal Code, Public Works Standard Specifications, or any subsequent revisions thereof, and according to the plans and specifications approved by the Public Works Department, prepared by Carlson, Barbee & Gibson, Inc. entitled "Plans for the Public Improvement of Clement Avenue Extension", dated October 2016, and "Plans for the Public Improvement of Buena Vista Avenue and Entrance Road", dated July 2016, filed in the office of the City's Public Works Director, included in *Exhibit A*, attached hereto and incorporated herein. Developer agrees that all details and notes shown on the aforementioned plans shall be made a part of the improvements.

4. Modifications: Developer reserves the right to modify said plans and specifications as the development progresses should unforeseen conditions occur, providing written approval is first obtained from the Public Works Director. City also reserves the right to make or require reasonable modifications to the plans and specifications whenever field conditions and/or public safety require such modifications. Developer shall pay the City for all costs including, without

limitation, plan check and inspection costs resulting from any such modifications. Developer shall provide personal supervision of the work on the improvements or have a competent contractor, foreman or superintendent on the work at all times during progress with authority to act for Developer.

Any alteration or alterations made to the Plans and Specifications or to any provision of this Agreement shall not operate to release any surety or sureties from liability on any bond or bonds attached hereto and made a part hereof, and consent to make such alterations is hereby given, and the sureties to such bonds waive the provisions of Section 2819 of the California Civil Code.

5. Compliance and Inspection: All development activity shall be in compliance with conditions of approval of the Subdivision and measures imposed to mitigate adverse environmental effects of the project including any monitoring program(s). All improvements shall be inspected by the City for compliance with City standards, plans, specifications and Subdivision regulations. Concurrent with the execution of this Agreement Developer shall pay to City the sum of \$13,000, which is to cover the costs of all inspections and Public Works charges.

6. Access to Work: Developer shall allow City's duly authorized representatives access to the work at all times and shall furnish them with every reasonable facility for ascertaining that the methods, materials, and workmanship comply with the requirements and intent of the approved plans. Developer is required to give at least one day's advance notice of the date upon which work is commenced and the date upon which the work is to be completed. City may reject defective work and require its repair, replacement, or removal by Developer, all at no expense to City.

7. Street Trees:

a. Developer agrees to plant street trees of the designated species, in accordance with improvement plans and Standard Specifications of the City, along all public street fronting the subdivision as shown on the improvement plans.

b. Developer shall maintain (including replacement) the street trees in a healthy, vigorous and growing condition, for a period of one (1) year after each tree is planted. Developer shall deposit with the City \$100 per tree (the "Maintenance Deposit") to guarantee that the trees will be maintained for the one-year period. All trees must be in a healthy, vigorous, growing condition at the end of the one-year maintenance period or the replacement of the tree and/or extension of the maintenance period will be required at the discretion of the Community Resources Director. At its option, City may use the Maintenance Deposit to maintain/replace the street tree. Any remaining Maintenance Deposit shall be returned to the Developer upon satisfactory completion of the maintenance period.

8. Street Sweeping: Developer agrees to keep the public right-of-way clean and clear of building materials on all streets where homes are occupied. If the Developer constructs the subdivision in phases, Developer agrees to pay for the cost of the City street sweeper to sweep the streets in front of the completed homes until the subdivision is accepted for maintenance by the

City.

9. Trench Paving: Developer agrees to maintain all excavations in existing streets in a safe condition until the permanent paving is installed. Temporary paving or a steel plate shall be installed at the end of each workday and the paved street area kept opened and available for traffic. Each side of the trench shall be cut to a neat line prior to the placement of the permanent pavement. If the permanent pavement is not installed within the time limits stated on the plans, or as directed by the Engineer, Developer agrees to pay City to repave the trench, at the rate of \$6.00 per square foot.

10. Undergrounding of Utilities: Developer agrees to place underground services to existing structures as well as all new utility lines to and within the Subdivision, to the extent shown on the approved utility plans.

11. Cable Television: Developer shall provide trenches for Cable Television facilities at no cost to the cable franchise.

12. City Services: Developer agrees to be financially responsible for all required City services provided to subdivision residents prior to acceptance of improvements by City.

13. Developer Not Agent of City: Neither Developer nor any of Developer's agents or contractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this agreement.

14. Developer Responsibility for Work: Until such time as the improvements are accepted by City, Developer shall be responsible for, and bear the risk of loss to, any of the improvements constructed or installed. Until such time as all improvements required by this agreement are fully completed, passed final inspection and, if to be dedicated to the City, are and accepted by City, Developer will be responsible for the care, maintenance of, and any repairs or reconstruction to remedy any damage to such improvements. City shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the work or improvements specified in this agreement prior to the completion and acceptance of the work or improvements. All such risks shall be the responsibility of and are hereby assumed by Developer.

15. Obligation to Warn Public: Until final acceptance of the improvements, Developer shall give good and adequate warning to the public of each and every potentially dangerous condition which exists in said improvements, and will take all reasonable actions to protect the public from such condition(s).

16. Sale or Disposition of Subdivision: Developer is the owner of the subject property or owner has also executed this Agreement to indicate consent to the terms herein. The sale or other disposition of this property will not relieve such parties from the obligations set forth herein. If the property or any portion of the property within the Subdivision is sold to any other person, the Developer may request a novation of this Agreement and a substitution of security. Upon

approval of the novation and substitution of securities, the Developer may obtain a release or reduction of the securities required by this Agreement. Nothing in the novation shall relieve the Developer of the obligations under Paragraph 30 for the work or improvements done by or on behalf of Developer. Developer shall give written notice to City within ten (10) days after close of escrow of any sale or transfer of all or any portion of subject property and any assignment of this Agreement, specifying the name or names of the assignee, the Assignee's mailing address, the amount and location of the land sold or transferred, evidence of the express assumption of the obligations hereunder, and the name and address of a single person or entity to whom any notice relating to this Agreement shall be given.

17. Improvement Security:

(a) In order to insure full and faithful performance of this Agreement and in accordance with the requirements of the Map Act and local implementing ordinances, Developer shall file with this Agreement the following security in the type and amounts specified:

(1) Faithful performance security in the sum of \$4,951,000 to cover all costs of public and private improvements, which is equivalent to one hundred percent (100%) of the approved estimate for the cost of improvement including a ten percent (10%) contingency.

(2) Labor and materials security in the sum of \$4,951,000 to ensure payment in full of all persons, firms and corporations who perform labor or furnish materials for work done on said public and private improvements, which is equivalent to one hundred percent (100%) of the approved estimate for the costs of labor and materials including a ten percent (10%) contingency.

(b) Developer shall furnish the bonds from a bonding company acceptable to the City Attorney.

(c) The faithful performance bond and labor and material bond are only required for work over \$25,000. Therefore, those estimates that are under \$25,000 will not need to budget for the bond premiums and those estimates over \$25,000 will need to budget for the bond premiums.

18. Form of Security: All security shall be of a type specified in Government Code §66499(a)(1), (2), or (3), and must be satisfactory to and be approved by the City Attorney as to form. In conjunction with the submittal of bonds, the successful bidder shall furnish the following information:

a. The original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bonds to do so; and

b. A certificate from the Clerk Alameda County that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended, or in

the event that it has, that renewed authority has been granted.

c. Certificates of deposit shall not be deemed to be satisfactory security unless such certificates provide that the City is the owner of record of such funds. The City shall be the sole indemnity named on any instrument required by this Agreement. In addition to the full amount of the security, there shall be included costs and reasonable expenses and fees including attorneys and expert's fees incurred in enforcing the obligation secured.

19. Cash Security: Developer shall, upon execution of this Agreement, deposit with the City \$5,000 to be applied at the discretion of the City to correct minor deficiencies that may arise during or after the construction of the Subdivision. Upon notice by the City, Developer shall pay sufficient monies to the City to maintain this cash deposit until inspection of all the improvements and acceptance of public improvement. Any unexpended amount will be returned to Developer at the time all bonds and securities are released.

20. Acceptance of Improvements: No improvement shall be accepted by the City unless and until it is free of all liens and encumbrances, free of all material defects and conditions which may create a hazard to the public health, safety, or welfare and until Developer has set and established survey monuments in accordance with the Final Map and to the satisfaction of the Public Works Director. Upon completion of final inspection of the improvements described herein, the Developer shall comply with Section 3093 of the Civil Code and shall forthwith deliver to the Public Works Director a copy of the notice of completion required by said section bearing certification of recordation by the County Recorder. In addition, all properties, rights-of-ways, easements, and other interests to be dedicated to the City shall be, before acceptance thereof by the City, free and clear of all liens and encumbrances of any kind or character whatsoever and free of any and all material defects and conditions creating a hazard to public health or public safety.

21. Guarantee and Security: Developer guarantees that all improvements shall be free from defects of materials or work quality and shall perform satisfactorily for a period of at least one (1) year from and after acceptance of such improvements by City as complete, and the Developer shall repair any defects in any such improvements and replace any defective improvements which cannot be repaired and which occur or arise within said one (1) year period at Developer's own expense. Should Developer fail to act promptly or in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before Developer can be notified, City may, at its option, make the necessary repairs or replacements or contract for the necessary work and Developer shall pay to City the actual cost of such repairs as well as all administrative expenses incurred by City.

Concurrent with acceptance of subdivision improvements, Developer shall provide a warranty security in the sum of \$495,100, which is equivalent to 10% of the improvement security.

22. Exoneration of Surety: City shall not be required to exonerate any surety, release any security relating to satisfactory completion of the improvements or issue occupancy permits until acceptance of proposed public improvements by the City or, in the case of improvements which will not be dedicated to and accepted by City, until the improvements have passed final

inspection by City. In addition, release of security, exoneration of sureties and issuance of occupancy permits will be predicated upon the receipt of required maintenance and/or warranty agreements and security therefore, as well as payment of all outstanding fees and reimbursements due City pursuant to this Agreement.

23. Building Permit Requirements: Prior to issuance of any building permit, Developer shall comply with all conditions precedent to issuance, including without limitation, the Uniform Fire Code requirements relating to access and water supply. Developer shall also pay the applicable Property Development Excise Tax as well as all required fees. No building permit shall be issued until all of the tract improvements are constructed and accepted by the City Engineer, except as otherwise permitted by the Map Act and as approved by the City Engineer. The subdivider shall pay traffic mitigation fees in the amount of \$1,627 for each new home, as fair share for citywide and regional transportation improvements.

24. Default of Developer: Default of Developer shall include, but not be limited to, Developer's failure to timely commence construction or the development under this agreement; Developer's failure to timely complete construction of the improvements; Developer's failure to timely cure any defect in the improvements; Developer's failure to perform substantial construction work for a period of twenty (20) calendar days after commencement of the work; Developer's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which Developer fails to discharge within thirty (30) days; the commencement of a foreclosure action against the Developer or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or Developer's failure to perform any other obligation under this Agreement. Developer shall notify the Public Works Director of Developer's insolvency, appointment of a receiver, the filing of a petition for bankruptcy, the commencement of a foreclosure action, or any correspondence in lieu thereof.

In addition to specific provisions of this agreement, performance by either party shall not be deemed to be in default where delays or defaults are due to war; terrorism; insurrection; riots; floods; earthquakes; fires; quarantine restrictions; court order; or any other similar causes beyond the control or without the fault of the party claiming an extension of time to perform.

25. Remedies in Event of a Default: In the event of Developer's default: (beyond any reasonable cure periods and subsequent to City's written notice to Developer of such default):

a. City reserves to itself all remedies available to it at law or in equity. Any remedies specified herein are in addition to and not in lieu of other remedies available to City. Developer agrees that City has full discretion in choosing the remedy or remedies to pursue and that the failure of City to take enforcement action shall not be construed as a waiver of that or any subsequent default or breach.

b. Developer, the surety and any person, firm, partnership, entity, corporation, or association claiming any interest in the real property hereinabove described and each of them shall totally reimburse City for its reasonable costs and expenses (including

reasonable attorneys fees and costs) including interest thereon at the maximum rate allowed by law from the date of notification of such cost and expense until paid. Such obligation for reimbursement shall not be limited by the amount of the estimates set forth or by such security as may have been provided to City in connection with this Agreement. Such amounts and interest accrued thereon shall constitute a lien on the subject property.

c. City may enter onto the subject property, take over the work and prosecute the same to completion by contract or any other method City deems advisable, and, in such event, City, without liability for so doing, may take possession of and utilize in completing the work, such materials, appliances, plant and other property belonging to Developer which may be on the site of the work and necessary performance of the work.

d. City may record a Notice of Violation against all lots in the Subdivision, revert the Subdivision to acreage and/or withhold or revoke all building, zoning and occupancy permits.

26. Hold Harmless:

a. The Developer shall be solely responsible and save City harmless for all matters relating to the payment of Developer employees and agents, including compliance with social security, withholding and all other regulations governing such matters.

b. Attacks to City's Approval of Project: Developer shall hold harmless, defend, and indemnify City, its officers, officials, directors, employees, agents, and volunteers from and against any claim, action, or proceeding against the City, its City Council, boards, commissions, officials, employees, and volunteers to attack, set aside, void, or annul an approval of the City concerning the subject property, which action is brought within the time period provided for in Government Code Section 66499.37. The City of Alameda shall promptly notify the developer of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the developer of any claim, action, or proceeding, or if the City fails to cooperate in the defense, the developer shall not hereafter be responsible to defend, indemnify, or hold harmless the City.

c. Claims Related to Injury to Persons or Property: Developer further agrees that it will hold harmless, defend, and indemnify the City, its City Council, boards, commissions, officials, employees, and volunteers (Indemnitees) from and against any or all loss, liability, expense, claim, lawsuit, costs (including costs of defense) and damages of every kind caused to any person or to the property of any person which may occur on any portion of the property then owned by Developer and caused by any acts or omissions of the Developer or its agents, servants, employees or contractors in the performance of its duties under this agreement.

27. Insurance: Without limiting Developer's indemnification provided herein, Developer shall take out and maintain at all times during the life of this contract the following

policies of insurance with insurers (if other than the State Compensation Fund) with a current A.M. Best's rating of no less than A:VII, or its equivalent, against injury to persons or damage to property which may arise from or in connection with the performance of work hereunder by Developer, its agents, employees or subcontractors:

a. **COVERAGE**: Developer shall maintain the following insurance coverage and said policies shall contain, or be endorsed with, the provision that coverage shall not be canceled nor reduced in coverage without thirty (30) days prior written notice (10 days for non-payment of premium) to City by certified mail:

(1) **Workers' Compensation**:

Statutory coverage as required by the State of California. Workers' Compensation with statutory limits as required by the California Labor Code. Said policy shall contain or be endorsed to provide that the policy shall not be canceled without thirty (30) days prior written notice to City and that the policy shall provide for a waiver of subrogation against City, its City Council, boards, commissions, officials, employees, and volunteers.

(2) **Liability**:

Commercial general liability coverage in the following minimum limits:

Bodily Injury: \$1,000,000 each occurrence
 \$2,000,000 aggregate - all other

Property Damage: \$1,000,000 each occurrence
 \$2,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive**:

Comprehensive automobile liability coverage (any auto) in the following minimum limits:

Bodily injury: \$100,000 each occurrence
Property Damage: \$100,000 each occurrence
 or
Combined Single Limit: \$200,000 each occurrence

With respect to automotive insurance, the amount of any deductible or self-insured retention over \$5,000 shall be declared to and security posted guaranteeing payment of losses and defense costs.

b. **SUBROGATION WAIVER**: Developer agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Developer shall look solely to its insurance for recovery. Developer hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Developer or City with respect to the services of Developer herein, a waiver of any right to subrogation which any such insurer of said Developer may acquire against City by virtue of the payment of any loss under such insurance.

c. **FAILURE TO SECURE**: If Developer at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Developer's name or as an agent of the Contractor and shall be compensated by the Developer for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

d. **ADDITIONAL INSURED**: City, its City Council, boards, commissions, officials, employees, and volunteers shall be named as an additional insured under all insurance coverages, except worker's compensation insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

e. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

f. For claims related to this project, the Developer's insurance is primary coverage to the City, and any insurance or self-insurance programs maintained by the City is excess to Developer's insurance and will not be called upon to contribute with it. After the Developer hires a Contractor, that insurance is primary coverage.

g. Any failure to comply with reporting or other provisions of the parties, including breach of warranties, shall not affect coverage provided to City, its officers, employees and agents.

h. Developer shall cause its geotechnical and civil engineering consultant to maintain professional liability insurance which includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least \$2,000,000. Such professional liability insurance will have an inception date or a retroactive date coinciding with or prior to the date their services are first performed and coverage shall continue uninterrupted until at least five (5) years after the date the work or the services are accepted.

i. Before construction begins, Developer shall provide City with a letter naming the contractor. Work on the project may then begin and continue as long as that general contractor is engaged as the general contractor on the job. No other general contractor may be substituted unless and until a letter naming the new general contractor is provided to City along with the necessary evidence of all required insurance. Developer shall cause the construction contractors and subcontractors to provide the following insurance coverages:

1. On or before the commencement of the terms of the Agreement between the Developer and Contractor, Contractor shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage

in compliance with paragraphs below. Such certificates, which do not limit Contractor's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the City of Alameda by certified mail, "Attention: Risk Manager." It is agreed that Contractor shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City, its City Council, boards, commissions, officials, employees, and volunteers as additional insured shall be submitted with the insurance certificates.

a. **COVERAGE:**

Contractor shall maintain the following insurance coverage:

(1) **Workers' Compensation:**

Statutory coverage as required by the State of California.

(2) Liability:

Commercial general liability coverage in the following minimum limits:

Bodily Injury: \$1,000,000 each occurrence
\$2,000,000 aggregate - all other

Property Damage: \$1,000,000 each occurrence
\$2,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum limits shown above.

(3) **Automotive:**

Comprehensive automobile liability coverage (any auto) in the following minimum limits:

| | |
|------------------------|-----------------------------|
| Bodily injury: | \$1,000,000 each occurrence |
| Property Damage: | \$1,000,000 each occurrence |
| or | |
| Combined Single Limit: | \$2,000,000 each occurrence |

(4) **Pollution Prevention:**

Legal liability required for hazardous materials excavation in the amount of 2,000,000 each occurrence.

(5) **Builders Risk:**

In the amount of \$1,000,000. If work involves explosives, underground or collapse risks, XCU must be included.

b. SUBROGATION WAIVER:

Contractor agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Contractor shall look solely to its insurance for recovery. Contractor hereby grants to City, on behalf of any insurer providing

comprehensive general and automotive liability insurance to either Contractor or City with respect to the services of Contractor herein, a waiver of any right to subrogation which any such insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance.

c. **FAILURE TO SECURE:**

If Contractor at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Contractor's name or as an agent of the Contractor and shall be compensated by the Contractor for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

d. **ADDITIONAL INSURED:**

City, its City Council, boards, commissions, officials, employees, and volunteers shall be named as an additional insured under all insurance coverages, except worker's compensation insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

e. **SUFFICIENCY OF INSURANCE:**

The insurance limits required by City are not represented as being sufficient to protect Contractor. Contractor is advised to consult Contractor's insurance broker to determine adequate coverage for Contractor. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all the requirements stated herein.

28. **Notices:** All notices, demands, requests, or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed to the City or Developer as hereinafter provided.

City: City of Alameda
City Attorney's Office
2263 Santa Clara Avenue
Alameda, CA 94501
510-747-4750

With copy to: City of Alameda
Public Works Department
City Engineer
950 W. Mall Square, Room 110
Alameda, CA 94501

510-747-7900

Developer: TL Partners I, LP
3500 Douglas Boulevard
Suite 270
Roseville, CA 95661
916-783-2300

29. Attorney's Fees: In the event any party to this Agreement brings an action to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorney's fees from the other party, whether or not such action or proceeding is prosecuted to judgment. This provision shall be in addition to any provisions regarding attorney's fees set forth in the bonds securing this Agreement.

30. Governing Law: This Agreement shall be construed and interpreted according to California law, and any action to enforce the terms and conditions of the Agreement or for the breach thereof shall be brought and tried in the County of Alameda, California.

31. Time of Essence: Time is of the essence.

32. Severability: The provisions of this Agreement are severable. If any portion is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

33. Entire Agreement: This Agreement constitutes the entire agreement with respect to the subject matter and all modifications, amendments or waivers under this Agreement must be in writing and signed by the authorized representatives of the parties. In the case of City, the appropriate party shall be the Public Works Director.

34. Reference: Any reference to a department manager shall include his or her duly authorized deputy or representative.

35. Recordation: Upon request by City, Developer agrees to execute and acknowledge a memorandum of this Agreement for recordation with the County Recorder. By recordation of this Agreement or a memorandum hereof, it is parties' intent to provide notice to future purchasers that the obligations and benefits set forth shall run with the land. At its option City may record the agreement or memorandum or may require Developer, at Developer's cost, to record such Agreement or memorandum and may withhold City permits until proof of recordation is provided to City.


IN WITNESS WHEREOF, Developer and City have hereunto caused their hands to be subscribed through their duly authorized officers:


TL PARTNERS I, LP
A California Limited Partnership

CITY OF ALAMEDA
A Municipal Corporation


By: TL Management, Inc.
Its: General Partner

DocuSigned by:



J. Timothy Lewis
President


Jill Keimach
City Manager

RECOMMENDED FOR APPROVAL:


Bob Haun
Public Works Director

APPROVED AS TO FORM:


Andrico Penick
Assistant City Attorney

10/6/14