

REIMBURSEMENT AGREEMENT FOR ESTUARY PARK ACCESS

(Alameda Landing, Residential Sub-Area)

THIS REIMBURSEMENT AGREEMENT FOR ESTUARY PARK ACCESS (Alameda Landing, Residential Sub-Area) (the “**Agreement**”) is entered into as of January ___, 2019 (the “**Effective Date**”), between and among the Successor Agency (“**Successor Agency**”) to the Community Improvement Commission of the City of Alameda (the “**CIC**”), the City of Alameda, a charter city and municipal corporation (the “**City**”), and Catellus Alameda Development, LLC, a Delaware limited liability company (“**Catellus**”).

RECITALS

This Agreement is entered into upon the basis of the following facts, understandings and intentions of the Successor Agency, City and Catellus.

A. The City and Palmtree Acquisition Corporation, a Delaware corporation (“**PAC**”), entered into that certain Development Agreement (Alameda Landing Mixed Use Commercial Project), dated as of January 16, 2007, and recorded in the Official Records of Alameda County, California (the “**Official Records**”) on July 24, 2007, as Series No. 2007275741, as amended by that certain First Amendment to Development Agreement (Alameda Landing Mixed Use Commercial Project), dated as of December 4, 2007 and recorded in the Official Records on December 20, 2007, as Series No. 2007427557, and as assigned by that certain Assignment and Assumption Agreement (Development Agreement (Alameda Landing Mixed Use Commercial Project)) by and between PAC, as assignor, and Catellus Alameda Development, LLC, a Delaware limited liability company (“**Developer**”), as assignee, effective as of February 28, 2011, and recorded in the Official Records on June 10, 2011, as Instrument No. 2011168603, that certain Partial Assignment (Development Agreement (Alameda Landing Mixed Use Commercial Project) – Remaining Portion of Parcel 2) by and between Developer, as assignor, and Target Corporation, a Minnesota corporation, effective as of July 18, 2012, and recorded in the Official Records on September 10, 2012, as Instrument No. 2012295655, and that certain Partial Assignment and Assumption Agreement (Development Agreement (Alameda Landing Mixed Use Commercial Project) – Remaining Portion of Parcel 2) by and between Developer, as assignor, and Catellus Alameda Retail, LLC, a Delaware limited liability company effective as of December 12, 2013, and recorded in the Official Records on December 12, 2013, as Instrument No. 2013381982 (collectively, the “**Commercial DA**”), relating to certain real property located in the City of Alameda, County of Alameda, State of California (the “**Property**”). The Property is more particularly described in the Commercial DA.

B. Pursuant to AB X1 26 (as revised by AB 1484), on February 1, 2012, the Successor Agency acquired the Property and assumed the CIC’s obligations pursuant to the DDA by operation of law.

C. On September 5, 2017, the City Council, by Ordinance No. 3188, approved an amendment to the Master Plan (as defined in Section 1.5.5 of the Commercial DA) (the “**2017 Master Plan Amendment**”) to add the “Maritime Commercial and Residential Variant (Sub-Areas 1 and 2)” (the “**Maritime Commercial and Residential Variant**”).

D. On or about December 15, 2017, the Successor Agency conveyed to Catellus a portion of the Property, known as Conveyance Parcel 7 for purposes of Adaptive Reuse (as defined below) of the existing buildings and wharf in the “Maritime Commercial Sub-Area” of the Maritime Commercial and Residential Variant (as described in the 2017 Master Plan Amendment). As used herein, “**Adaptive Reuse**” means what is described in the portion of the 2017 Master Plan Amendment under the heading “Maritime Commercial Sub-Area,” except the last paragraph of such portion. Pursuant to the Purchase and Sale Agreement and Escrow Instructions dated November 6, 2017, as amended, Catellus re-conveyed the entirety of Conveyance Parcel 7 to FISC Properties LLC, a California limited liability company.

E. Section 3.6.4.c(ii) of the Commercial DA, as clarified by the DA Operating Memorandum dated December 1, 2017 (the “**2017 DA Operating Memo**”), requires Catellus to update and amend the Master Demolition, Infrastructure, Grading and Phasing Plan for the Property to include, for the “Residential Sub-Area” of the Variant (as described in the 2017 Master Plan Amendment), a westward extension of Mitchell Avenue from either its current terminus, or a new cul-de-sac further to the west as necessary to provide vehicle and pedestrian access by either; (1) constructing a service road, not to exceed 25 feet in width along the planned alignment of the Mitchell Avenue extension to the planned parking lot for Estuary Park, or (2) constructing a service road, not to exceed 21 feet in width along the planned alignment of the Mitchell Avenue extension to the planned parking lot for Estuary Park and constructing a pedestrian and bicycle path not to exceed six (6) feet around the southwest border of the detention pond from the existing Tri Pointe bicycle path to the eastern end of the Estuary Park, as applicable and all as described under the heading “Estuary Park Access” in the 2017 Master Plan Amendment (the “**Service Road**”).

F. On March 28, 2018, the City Council approved \$800,000.00 for this Service Road project as part of the City’s Fiscal Year 2017-18 Mid-Year Budget Update.

G. The parties hereto desire that (i) Catellus develop and construct the Service Road, (ii) the City reimburse Catellus for all costs and expenses related to Catellus’ development and construction of the Service Road, and (iii) Catellus to reimburse the City for the “Base Road Cost” (as defined below), all upon the terms and conditions set forth herein.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, covenants, conditions and promises contained in this Agreement, the Successor Agency, City and Catellus agree as follows:

1. Construction of Service Road. Catellus shall develop and construct the Service Road in accordance with the plans attached hereto as Exhibit A.

2. Reimbursement Amount.

(a) The costs and expenses of the development and construction of the Service Road (the “**Reimbursement Amount**”), shall include, without limitation, all costs and expenses as set forth in the budget estimate attached hereto as Exhibit B. The scope of work described in items 1 through 14 of Exhibit B is herein referred to as the “**Base Road Work**”. All other development and construction work that may be necessary or required with respect to the

Service Road beyond the scope of the Base Road Work, including, without limitation, items 15 through 22 of Exhibit B, are herein referred to as the “**Road Upgrade Work**”. Together, the Base Road Work and the Road Upgrade Work shall comprise the “**Service Road Work**”. The monthly Reimbursement Amount shall be paid based on written documentation delivered to the City, including invoices, evidencing that the amount(s) paid by Catellus to develop and construct the Service Road Work. The monthly Reimbursement Amounts shall be paid by the City to Catellus within forty-five (45) days of submission of the documentation described in the foregoing sentence with respect to any given month during which Service Road Work is performed. In connection with the Service Road Work, in no event shall Catellus be obligated to incur costs exceeding the amounts approved by the City Council for the Service Road project, nor shall the City be obligated to reimburse Catellus for costs exceeding the amounts approved by the City Council for the Service Road project.

(b) In the event the total costs and expenses incurred by Catellus in the development and construction of the Service Road Work are expected to exceed \$800,000.00, the City shall request additional funds from the City Council necessary to complete the Service Road (such amounts in excess of \$800,000.00, the “**Excess Reimbursement Amounts**”). Catellus shall have no obligation to continue Service Road Work until the City Council has approved necessary Excess Reimbursement Amounts. The parties shall reasonably allocate Excess Reimbursement Amounts between the Base Road Work and the Road Upgrade Work. To the extent any Excess Reimbursement Amounts are allocated to Base Road Work and actually paid to Catellus (such amounts, “**Base Road Cost Overruns**”), the amount of Base Road Cost Overruns shall be added to the Base Road Cost described below, and be subject to reimbursement by Catellus to the City in accordance with Section 3. To the extent any Excess Reimbursement Amounts are allocated to Road Upgrade Work, such amounts shall not be subject to reimbursement by Catellus to the City.

3. Payment of Base Road Cost. After “Completion” (as defined below) of the Service Road and payment to Catellus of the Reimbursement Amount, Catellus shall pay to the City the lesser of (i) the amount of Six Hundred Fifteen Thousand, Two Hundred Fifty-Eight and 00/100 Dollars (i.e., \$615,258.00) or (ii) the actual cost of the Base Road Work (the “**Base Road Cost**”), which may be increased by amounts of Base Road Cost Overruns described above, subject to the terms and conditions of this Section. The parties acknowledge that Catellus currently contemplates causing the remaining residential parcels within the Property to be sold and conveyed in two (2) takedowns. Subject to, and concurrently with the closing of the first takedown of the remaining residential parcels (if, and to the extent such takedown occurs), Catellus shall pay to the City fifty percent (50%) of the Base Road Cost. Subject to, and concurrently with the closing of the second takedown (if, and to the extent such takedown occurs), Catellus shall pay to the City the remaining fifty percent (50%) of the Base Road Cost. In the event all of the remaining residential parcels are sold and conveyed in a single takedown, subject to, and concurrently with the closing of such takedown, Catellus shall pay to the City one hundred percent (100%) of the Base Road Cost. The City acknowledges that (a) nothing in this Agreement is intended to guaranty when the closing of any takedown of the remaining residential parcels will occur, or that any such takedowns will actually occur, and (b) the City’s right to payment of any portion of the Base Road Cost is expressly conditioned on the applicable closings of the takedown(s) of the remaining residential parcels. As used herein, “**Completion**” of the Service Road means the earlier to occur of: (i) substantial completion of the Service Road

improvements as evidenced by the acknowledgement and sign off of the City-issued permit by a person so authorized, or (ii) the taking of possession or opening of the Service Road for access and public use by the City of Alameda Recreation and Parks Department.

4. Miscellaneous.

(a) This Agreement may not be amended or modified except by a written instrument signed by an officer or other authorized representative of all parties hereto.

(b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by the party granting the waiver, and only to the extent expressly provided in such written waiver.

(c) Time is of the essence.

(d) This Agreement shall be construed and governed in accordance with the laws of the State of California.

(e) Nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making the Successor Agency or City and Catellus joint ventures or partners.

(f) Each of the exhibits referenced in this Agreement is attached hereto and incorporated herein.

(g) The Recitals are true and correct and incorporated herein by this reference.

(h) This Agreement embodies the entire agreement between the parties hereto relative to the subject matter hereof, and there are no oral or parole agreements existing among any of the parties hereto relative to the subject matter hereof which are not expressly set forth herein and covered hereby.

(i) The persons signing below represent and warrant that they have the authority to bind their respective party and that all necessary board of directors', shareholders', members', partners', the city councils', commissions', board of trustees', or other approvals have been obtained.

(j) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed one or more copies of this Agreement as of the date first set forth above.

SUCCESSOR AGENCY:

Successor Agency of the Community
Improvement Commission of the City of Alameda

By: _____
David L. Rudat
Interim City Manager

Approved as to form:

By: _____
Lisa Maxwell
Assistant General Counsel

Recommended for Approval:

By: _____
Debbie Potter
Base Reuse and Community Development Director

CITY OF ALAMEDA,
a charter city and municipal corporation

Approved as to form:

By: _____
David L. Rudat
Interim City Manager

By: _____
Lisa Maxwell
Assistant General Counsel

CATELLUS:

Catellus Alameda Development, LLC,
a Delaware limited liability company

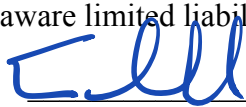
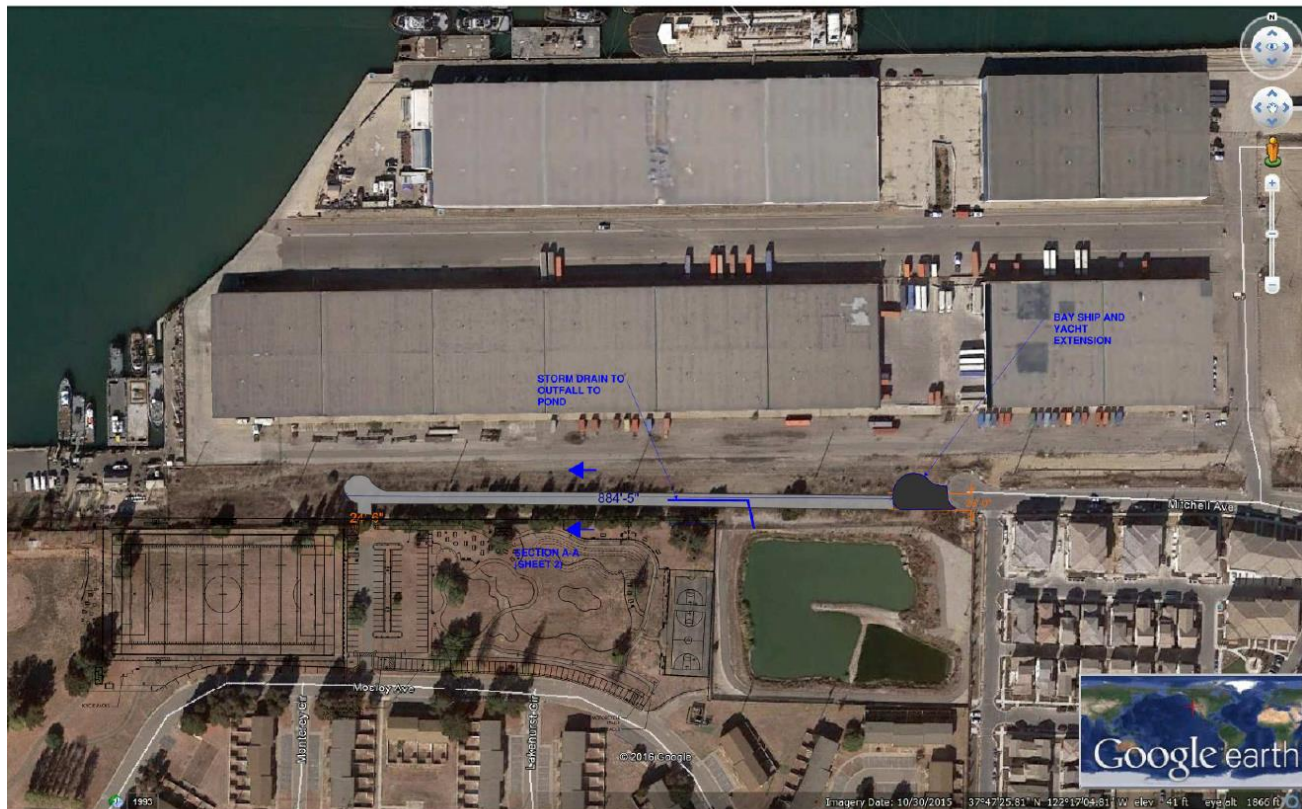
By:  _____
Name: Tom Marshall
Title: Executive Vice President

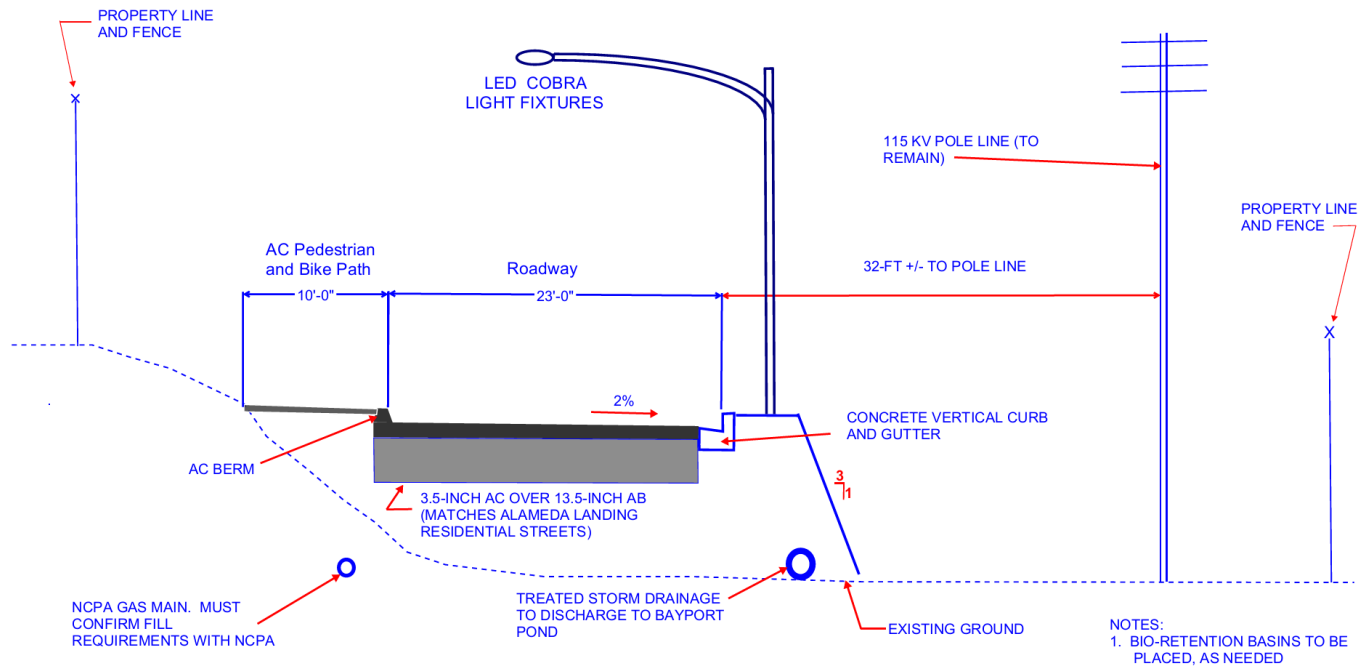
Exhibit A
Plans for Service Road
[Attached]



SHEET 1 OF 2

**ESTUARY PARK DRIVEWAY
EXHIBIT "A"
BKF ENGINEERS
05 DECEMBER 2018**

0 100 200 300



SECTION A-A

**ESTUARY PARK DRIVEWAY
FROM MITCHELL EXTENSION**
TYPICAL SECTION
BKF ENGINEERS
05 DECEMBER 2018

SHEET 2 OF 2

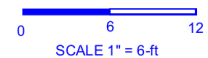


Exhibit B

Estimated Reimbursement Amount Budget

[Attached]

EXHIBIT "B"

ESTUARY PARK DRIVEWAY -- ALAMEDA

ITEM	DESCRIPTION	UNIT	UNIT PRICE	QUANTITY	TOTAL
A	MITCHELL AVE to West Estuary Parking	LF	885	MPA Requirement (25' Driveway / No Path)	
1	Clear and Grub	LS			\$ 54,000
2	Geomembrane	SF	\$ 1.50	8,850	\$ 13,275
3	Cut and Fill	CY	\$ 10	4,550	\$ 45,500
4	12-inch SD	LF	\$ 85	700	\$ 59,500
5	Outfall to Pond	EA	\$ 15,000	1	\$ 15,000
6	Asphalt Concrete 3-1/2"	SF	\$ 2.75	22,130	\$ 60,858
7	Aggregate Base 13-1/2"	TN	\$ 30	1,790	\$ 53,700
8	Fine Grading	SF	\$ 1.25	22,130	\$ 27,663
9	Vertical Curb	LF	\$ 35	920	\$ 32,200
10	Curb and Gutter	LF	\$ 50	885	\$ 44,250
11	Bio-Retention (non-structural)	SF	\$ 16	1,030	\$ 16,480
12	Drain Inlets	EA	\$ 4,500	2	\$ 9,000
13	Stripping	LF	\$ 3	1,770	\$ 5,310
14	Erosion Control	LS	\$ 15,000	1.2	\$ 18,000
SUBTOTAL					\$ 454,736
Contractor General Conditions					22,737
Soft Cost					68,210
Permits					13,642
Contingency					55,933
BASE ROAD WORK					\$ 615,258
Road Upgrade Work					
15	Clearing and grubbing (incl. tree removal) for pedestrian path	LS			\$ 32,000
16	Additional fine grading for pedestrian path	SF	\$ 1	6,190	\$ 7,737
17	Additional bio-retention for pedestrian path	SF	\$ 16	30	\$ 480
18	Add pedestrian path paving, 3" AC / 6" AB	SF	\$ 6	8,700	\$ 52,200
19	Add decorative street lights	EA	\$ 6,500	9	\$ 58,500
20	Add street lighting conduits and wire	LF	\$ 28	885	\$ 24,780
21	Add street lighting pull boxes	EA	\$ 450	9	\$ 4,050
22	Less savings due to narrowed street section				\$ (19,170)
SUBTOTAL					\$ 160,577
Contractor General Conditions					8,029
Soft Cost					5,628
Permits					1,833
Contingency					8,675
TOTAL ROAD UPGRADE WORK					\$ 184,742
GRAND TOTAL PROJECT COST					\$ 800,000