

Development Agreement

Effective Date: April 4, 1989

The Property Owners: Harbor Bay Village Four Associates
Harbor Bay Village Five Associates
Harbor Bay Isle Associates

Document No: 600-30
Filed: 4-5-89, 1989
Office of the City Clerk
City of Alameda

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter referred to as "Agreement") is made and entered into this 4th day of April, 1989, by and between The City of Alameda, a municipal corporation (hereinafter referred to as "City"), and Harbor Bay Isle Associates, a California general partnership of which the general partners are Doric Development, a California corporation and H.B. Interests, Inc., a California corporation (hereinafter referred to as "HBIA"), Harbor Bay Village Four Associates, a California limited partnership of which the general partners are Doric Development, Inc., a California corporation and Home Capital Corporation, a California corporation (hereinafter referred to as "HBVFour") and Harbor Bay Village Five Associates, a California limited partnership of which the general partners are Doric Development, Inc., a California corporation and Home Capital Corporation, a California corporation (hereinafter referred to as "HBVFive"), (HBIA, HBVFour and HBVFive shall sometimes hereinafter be referred to individually as a "Property Owner" and collectively as the "Property Owners").

1. RECITALS: This Agreement is predicated upon the following facts and circumstances:

1.1. Code Authorization: The City of Alameda, a charter city, enters into this Agreement pursuant to Government Code Sections 65864 through 65869.5 which authorize City to enter into binding development agreements with persons

having legal or equitable interest in property for the development of such property. The City further enters into this Agreement pursuant to its charter and self-rule powers and Alameda Municipal Code Chapter 6, sections 11-611 through 11-652.

1.2. Interest of Property Owners: HBVFour represents that it has an equitable or a legal interest in the approximately 7 remaining acres of real property described on Exhibit A as Village IV (sometimes referred to as the "Village IV Property"). HBVFive represents that it has an equitable or a legal interest in the approximately 122.3 acres of real property described on Exhibit A as Village V (sometimes referred to as the "Village V Property"). HBIA represents that it has an equitable or a legal interest in the approximately 250 acres of real property described on Exhibit A as the Harbor Bay Business Park (sometimes referred to as the "Business Park" or "Business Park Property"), in the approximately 4 acres of real property described on Exhibit F as the Interior Park Land, and in the approximately 8 acres of real property described on Exhibit G as the Interior School Site. The Village IV Property, the Village V Property and the Business Park, the Interior Park Land and the Interior School Site are located in the City of Alameda, County of Alameda, California, and shall sometimes hereinafter be collectively referred to as the "Properties." The Properties are part of a larger development on property comprised of Villages I through V and the related Business Park, which

property is described on Exhibit B, and which for purposes of this Agreement, is sometimes referred to as the "Harbor Bay Project." HBVFour, HBVFive and/or HBIA have legal or equitable interests as described herein in the Harbor Bay Project.

1.3. Public Benefit: The City desires to enter into this Agreement to encourage and provide for the development of public facilities in order to support the development of new housing; to encourage private participation, investment and comprehensive planning which will make maximum efficient utilization of resources at the least cost to the public; to obtain services and urban infrastructure; to strengthen the public planning process; to facilitate major private expenditures and investments with respect to construction and installation of infrastructure and facilities, for example, the provision of park land, school facilities, roadway landscaping, sewer system improvements, and fire station. The City further desires to enter into this Agreement to assure that the Properties will be developed to a desirable density and to assure that the public facilities will be available to meet the needs of future residents.

1.4. Purpose of Agreement Under Municipal Code: City and the Property Owners desire to enter into this Agreement to achieve the purposes set forth in Section 11-612 of the Alameda Municipal Code, namely, to strengthen the public

planning process, encourage private participation and comprehensive planning, reduce the economic costs of development, promote orderly growth and development and the economic welfare of the community, and ensure provision for adequate circulation, utilities, and services.

1.5. Approvals for Harbor Bay: HBIA has obtained approvals from the City to build up to a total 3,200 units in the Villages I to V. HBIA has executed and recorded a covenant limiting the development of residential units in Villages I through V to 3,200. The neighborhoods in Villages I through IV are completed or are currently in the process of completion. Under such existing approvals and such covenant, HBVFive, as successor owner to HBIA of Village V, has approval to build 839 residential units in Village V.

1.6. Decreased Density: HBVFive, under this Agreement and the Vesting Tentative Map as hereinafter defined, has proposed a revised development plan for Village V which will result in a lower density of development (i.e., not more than 3,000 units in Villages I through V including 630 units in Village V not including the 1.7 acres for the ferry terminal parking site parcel, or the 1.0 acre for the fire station site parcel), larger homes and lots, and wider neighborhood streets than are currently being provided under the existing approvals of Village V. Such a revised development plan for Village V would be beneficial to the whole Harbor Bay community, to neighborhoods on Bay Farm Island and to

the City as a whole. HBVFive and City are currently processing vesting tentative map, for Tract No. 5905 ("Vesting Tentative Map"), for Village V which will implement the revised development plan for Village V.

1.7. Settlement Agreements: The parties desire to enter into this Agreement in order to clarify and implement the requirements and satisfy the conditions of that certain Settlement Agreement by and between the City of Alameda and Harbor Bay Isle Associates, dated December 5, 1977 ("Settlement Agreement I") and to clarify the requirements and satisfy the conditions of that certain Settlement Agreement by and between the City of Alameda and HBIA, HBVFour and HBVFive, dated November 3, 1988 ("Settlement Agreement II").

Additional conditions, exactions, dedications, regulations, or fees, except as provided in paragraph 4.6 of this Agreement, and in the Existing Approvals as described in paragraph 1.9 below and on Exhibit D, can be imposed by the City on the development of the Properties.

1.8. Provision of Facilities: The parties desire, by entering into this Agreement and the Settlement Agreements referred to in paragraph 1.7 above, to resolve issues relating to the responsibility for provision of the public facilities to be provided by the respective Property Owners in the Harbor Bay Project, including, without limitation, provision for a fire station and school sites; to provide for the completion, improvement, and maintenance of the

public open space for the Harbor Bay Project; and to provide a funding source for a portion of the costs of certain infrastructure, including major arterial roads for the Harbor Bay Project, as more particularly described on Exhibits C and M.

1.9. Intent of Parties: The parties desire to enter into this Agreement relating to the Properties in conformance with the provisions of the Government Code and the Alameda Municipal Code in order to achieve the development of land uses permitted under this Agreement. But for City's assurances of the Property Owners' ability to complete development of the Properties in accordance with the Existing and Proposed Approvals more particularly described on Exhibit D, hereinafter sometimes referred to collectively as "Existing and Proposed Approvals," including without limitation the Vesting Tentative Map for Tract No. 5905, the Mello-Roos Community Facilities District and the anticipated time schedule set forth in this Agreement, the Property Owners would not enter into this Agreement nor agree to provide the public benefits obtained by City pursuant to this Agreement.

1.10. Environmental Review: Under Settlement Agreement II, City has reflected its understanding and agreement that City shall require no new, subsequent or supplemental environmental impact report or other environmental review for the development of the Properties as described in this Agreement.

City has conducted all necessary environmental review for the development of the Properties and the Harbor Bay Project, including review required under the California Environmental Quality Act, and, after providing public notice as required by law, has certified as adequate and complete the Final Environmental Impact Report for Harbor Bay Isle prepared by A.D. Little and certified in March, 1974, as previously supplemented by the City's General Plan Elements and their related environmental impact reports, J.H.K. Traffic Studies, and updated by the Addendum to the H.B.I. the environmental impact report dated December, 1988.

As part of its review and approval of the Existing and Proposed Approvals, City has undertaken, pursuant to the California Environmental Quality Act ("CEQA"), the required analysis of the environmental effects which would be caused by the development of the Properties and the Harbor Bay Project. City has imposed a series of mitigation measures as required conditions in connection with approvals of the development of the Properties and the Harbor Bay Project to eliminate or reduce to an acceptable level the adverse impacts identified in the environmental analyses and determinations. In connection with its review and consideration of this Agreement, City has reviewed the Final Environmental Impact Reports for Harbor Bay Isle prepared by A.D. Little and certified by the City in March, 1974, as previously supplemented by the City's General Plan Elements and their EIR's

and the JHK Traffic Studies, and the Addendum to the Final Environmental Impact Report for Harbor Bay Isle dated December, 1988 prepared for the approvals of the Village V Property (collectively "Previous CEQA Determinations"), and City has found and determined that no subsequent or supplemental Environmental Impact Report is necessary or required under CEQA in order to enter into or undertake the terms and conditions of this Agreement, since they are consistent with, and within the scope of, the Previous CEQA Determinations for the Existing and Proposed Approvals and because the mitigation measures provided for in the Previous CEQA Determinations are implemented and assured to fulfillment by the terms and conditions of this Agreement. Specifically, but without limiting the generality of the foregoing, the City has found and determined that there are no substantial changes in the development of the Properties and the Harbor Bay Project, or in the circumstances under which the development of the Properties and the Harbor Bay Project are to be undertaken pursuant to this Agreement, which involve new impacts not considered in the Previous CEQA Determinations, so that no further environmental analysis is required under CEQA.

1.11. Planning Director Hearing: Pursuant to Alameda Municipal Code section 11-622, the Planning Director and the City Manager have accepted, reviewed and approved for filing this Agreement. The Planning Director and the

City Manager have approved the proposed Agreement and determined that the Agreement as proposed is consistent with the General Plan of City and other regulations prescribed for the use of the Properties in accordance with Alameda Municipal Code section 11-611 and 11-612.

1.12. Planning Board Hearing: On March 13, 1989, and March 16, 1989, the Planning Board of City, after providing public notice as required by law, held a public hearing on the application for the Agreement.

1.13. City Council Findings: The City Council of City, after providing public notice as required by law, similarly held a public hearing on April 4, 1989. The City Council found that the Agreement is consistent with the General Plan, as well as all other applicable plans, policies and regulations of City in satisfaction of Alameda Municipal Code section 11-641 and is compatible with the uses authorized in, and the other regulations prescribed for, the use of land.

1.14. City Ordinance: On April 4, 1989, the City Council of the City adopted Ordinance No. ^{SK3} 2426 ^{mw} ¹⁰ approving this Agreement with the Property Owners. The ordinance took effect on April 4, 1989.

2. PUBLIC IMPROVEMENTS:

HBIA and HBVFive shall dedicate property and provide public improvements and City shall accept for dedication, improve and

maintain such property upon the provisions and conditions set forth in this paragraph as follows:

2.1. Shoreline Park:

2.1.1. Background: From time to time, HBIA has offered to dedicate, and City has accepted dedication of, property for a shoreline park along the boundary of the Harbor Bay Project with San Francisco Bay ("Shoreline Park"). Portions of the Shoreline Park previously dedicated to the City are identified as Phase I, Phase II, and Phase III-A and shown on Exhibit E. The City has completed the construction of landscaping and public access improvements in the Phase I and Phase II portions of the Shoreline Park and provides maintenance of said landscaping and public access improvements in the Phase I and Phase II portions of the Shoreline Park. The City has not yet completed the construction of landscaping and public access improvements in the Phase III-A portion of the Shoreline Park along Harbor Bay Parkway in the Harbor Bay Business Park according to the final plans and specifications approved by the City in the Final Development Plan for said property and by the San Francisco Bay Conservation and Development Commission ("BCDC"). Also, City has not yet commenced maintenance of the already completed portions of the landscaping and public access improvements in the Phase III-A portion of the Shoreline Park.

2.1.2. Phase III-A Portion of Shoreline Park:

Within 60 days of the execution of this Agreement, City shall commence to install the remaining landscaping and public access improvements in the Phase III-A Portion of the Shoreline Park in accordance with the final plans and specifications approved by the City in the Final Development Plan for said property and by BCDC on July 31, 1987, using the Park Improvement Fund described in paragraph 2.3 of this Agreement. City shall complete the installation of such landscaping and public access improvements within 120 days of commencement of work.

Upon completion of the construction of the landscaping and public access improvements in the Phase III-A Portion of the Shoreline Park, City shall maintain said landscaping and public access improvements in said Phase III-A Portion of the Shoreline Park at least to the level of maintenance currently established and performed for the circulation paths along the edges of the existing Harbor Bay lagoon in Villages I through IV. City acknowledges and agrees that said level of maintenance is higher than the level of maintenance currently established and performed for the Phase I and Phase II Portions of the Shoreline Park. HBIA agrees that fifty percent (50%) of the costs of maintenance of the landscaping and public access improvements in the

Phase III-A Portion of the Shoreline Park may be assessed against the Business Park properties through the Island City Landscaping and Lighting District 84-2, and HBIA agrees to annex additional Business Park properties to Zone 5 of said District if necessary to implement this source of funding. City explicitly agrees that the other fifty (50%) percent of such costs shall be borne by City from sources other than HBIA or the Business Park properties.

2.1.3. Phase III-B Portion of Shoreline Park:

The Phase III-B of the Shoreline Park as shown on Exhibit E is an approximately 3.25 acre section of the Shoreline in the Business Park extending from a point approximately 300 feet west of the westerly terminus of the Phase III-A portion of the Shoreline Park to the easterly border of Village V. HBIA shall deliver an offer to dedicate to City the Phase III-B Portion of the Shoreline Park on or prior to the date of recordation of the final map for the extension of Harbor Bay Parkway in the Business Park. City shall accept the dedication of the Phase III-B Portion of the Shoreline Park within 30 days of HBIA's delivery of its offer to dedicate said property to City.

Prior to delivery of such an offer of dedication, HBIA shall obtain the approval of City and BCDC of final plans and specifications for landscaping and public

access improvements for the Phase III-B Portion of the Shoreline Park. Within 90 days of HBIA's delivery to City of the offer to dedicate the Phase III-B Portion of the Shoreline Park, City shall commence to install the landscaping and public access improvements in Phase III-B in accordance with the final plans and specifications therefor approved by City and BCDC, using the Park Improvement Fund described in paragraph 2.3 of this Agreement. City shall complete the installation of such landscaping and public access improvements within 180 days of commencement of work.

Upon completion of the construction of the landscaping and public access improvements in the Phase III-B Portion of the Shoreline Park, City shall maintain said landscaping and public access improvements in said Phase III-B Portion of the Shoreline Park at least to the level of maintenance currently established and performed for the circulation paths along the edges of the existing Harbor Bay lagoon in Villages I through IV. City acknowledges and agrees that said level of maintenance is higher than the level of maintenance currently established and performed for the Phase I and Phase II Portions of the Shoreline Park. HBIA agrees that fifty percent (50%) of the costs of maintenance of the landscaping and public access improvements in the Phase III-B Portion of the Shoreline Park may be asses-

sed against the Business Park properties through the Island City Landscaping and Lighting District 84-2, and HBIA agrees to annex additional Business Park properties to Zone 5 of said District if necessary to implement this source of funding. City explicitly agrees that the other fifty percent (50%) of such costs shall be borne by City from sources other than HBIA or the Business Park properties.

2.1.4. Phase IV Portion of Shoreline Park:

Phase IV of the Shoreline Park shown on Exhibit E is along Village V. HBVFive shall deliver an offer to dedicate to City the Phase IV Portion of the Shoreline Park on or prior to the date of recordation of the last final map for Village V. City shall accept the dedication of the Phase IV Portion of the Shoreline Park within 30 days of HBVFive's delivery of its offer to dedicate said property to City.

Prior to delivery of such an offer of dedication, HBVFive shall obtain the approval of City and BCDC of final plans and specifications for landscaping and public access improvements for the Phase IV Portion of the Shoreline Park. Within 90 days of HBIA's delivery to City of the offer to dedicate the Phase IV Portion of the Shoreline Park, City shall commence to install the landscaping and public access improvements in Phase IV in accordance with the final plans and specifications

therefor approved by City and BCDC, using the Park Improvement Fund described in paragraph 2.3 of this Agreement. City shall complete the installation of such landscaping and public access improvements within 180 days of commencement of work.

Upon completion of the construction of the landscaping and public access improvements in the Phase IV Portion of the Shoreline Park, City shall maintain said landscaping and public access improvements in said Phase IV Portion of the Shoreline Park at least to the level of maintenance currently established and performed for the circulation paths along the edges of the existing Harbor Bay lagoon in Villages I through IV. City acknowledges and agrees that said level of maintenance is higher than the level of maintenance currently established and performed for the Phase I and Phase II Portions of the Shoreline Park. City explicitly agrees that the costs of maintenance of the landscaping and public access improvements in the Phase IV Portion of the Shoreline Park shall be borne by City from sources other than HBVFive or the Village V properties.

2.1.5. Conditions Satisfied: City acknowledges and agrees that HBVFive's and HBIA's dedication as described in this paragraph 2.1 and in paragraph 2.2 shall be in complete satisfaction of the Property

Owners' obligations to dedicate property pursuant to Settlement Agreement I and Settlement Agreement II and in complete satisfaction of the conditions of Tentative Maps no. 3810 and 4500 relating to public land dedication for parks, provision for parks, maintenance for parks and any other requirements for the provision or maintenance of public lands for parks and requirements for payment of fees, except as provided in this Agreement, for parks imposed in connection with the development of the Harbor Bay Project and the Properties.

2.1.6. Reservation of Easement: Notwithstanding anything to the contrary contained in this Agreement, City acknowledges and agrees that, in connection with HBIA's and HBVFive's dedication of park land as described in this paragraph 2.1, HBIA may reserve for the benefit of HBIA an easement to permit a portion of such dedicated property to be used for facilities for a ferry terminal and ferry service. The amount of dedicated property subject to the easement shall conform to the final development plan approved by City.

2.2. Interior Park Land:

2.2.1. Dedication: Subject to the Conditions Precedent as defined in paragraph 4.8 below, on or before April 4, 1989, HBIA shall deposit into escrow a deed conveying to City approximately four acres of prop-

erty located in Village IV, described in Exhibit F as the Interior Park Land ("Interior Park Land") and escrow instructions providing for the recordation of the deed on or before the tenth day after City's approvals of the Vesting Tentative Map and this Agreement are final, including expiration of the time periods for administrative appeals and court challenges and/or entry of final administrative determinations upholding such approvals.

2.2.2. Improvements: On or prior to April 4, 1989, City and HBIA and HBVFive shall agree to the conceptual plans for the improvements to the Interior Park Land. On or prior to September 30, 1989, City shall commence construction of the improvements subject to the availability of the funds described in paragraph 2.3. City shall complete all appropriate improvements to the Interior Park Land using the Park Improvement Fund described in paragraph 2.3 of this Agreement by September 30, 1990. City shall maintain the Interior Park such that it satisfies, at a minimum, the standards in effect on the date of this Agreement for Leydecker Park.

2.3. Park Improvement Fund:

2.3.1. Background: City Municipal Code Section 3-1311, et seq., imposes a \$900 payment for construction of each new residential dwelling unit in City,

payable upon issuance of a building permit ("Dwelling Unit Tax"). On June 27, 1979, City and HBIA entered into an agreement entitled "Agreement Re Prepayment of Dwelling Unit Tax" ("Dwelling Unit Tax Agreement") which included, among other provisions, a provision stating that HBIA could, at its option, prepay the Dwelling Unit Tax to enable City to have funds available to construct public park improvements on City-owned parcels in the Harbor Bay Project. The Dwelling Unit Tax Agreement also provided that certain Dwelling Unit Tax payments already paid to City prior to June 27, 1979, for residential units in the Harbor Bay Project would be allocated to public park improvement projects in the Harbor Bay Project. The Property Owners and City, by entering into this Agreement, desire to allocate certain already paid Dwelling Unit Taxes and to agree upon the scheduling, design, construction, and completion of park improvement projects anticipated in the Harbor Bay Project as set forth in this Agreement.

2.3.2. Park Improvement Fund: Within 60 days of execution of this Agreement, City shall allocate and deposit certain Dwelling Unit taxes which already have been paid, as described in subparagraph 2.3.1, into a separate interest bearing account (the "Park Improvement Fund") to help defray the costs of the park im-

provements for the Phase III-A Portion of the Shoreline Park.

On commencement of construction of the improvements for the Interior Park Site, City shall allocate funds from the Mello-Roos described in paragraph 3.1 of this Agreement in an amount equal to the Dwelling Unit Tax which could have been collected for Village V, computed as \$900 per unit (approximately \$560,000). The parties agree that such amount equal to the Dwelling Unit Tax shall be deposited by City into the Park Improvement Fund, or such other account as is mutually agreed to by City and HBVFive, and City agrees to accept such payment as the Dwelling Unit Tax Payment, which could have been collected by City on construction of the Village V residential units.

In addition to the amount equal to the Dwelling Unit Tax, City shall obtain \$650,000 (and any additional amounts mutually agreeable to City and HBVFive), also allocated from the Mello-Roos, concurrent with City's acceptance of dedication of the Phase IV portion of the Shoreline Park and deposit such funds into the Park Improvement Fund, or such other account as is mutually agreed upon by City and HBVFive.

City also shall obtain \$300,000 (and any additional amounts not to exceed \$250,000 mutually agreeable to City and HBIA) from a Harbor Bay Business Park Assessment District or a Business Park Mello-Roos, concurrent with City's acceptance of dedication of the Phase III-B portion of the Shoreline Park and deposit such funds into the Park Improvement Fund, or such other account as is mutually agreed upon by City and HBIA.

Any additional funds required to defray the costs of the park improvements described in this Agreement shall be solely the responsibility of City. Any excess funds in the Park Improvement Fund may be used by City for payment of costs associated with construction of the fire station, described in paragraph 2.6 of this Agreement, or the purchase of fire equipment for the fire station.

2.3.3. Use of Park Improvement Fund: City shall be entitled to withdraw amounts from the Park Improvement Fund on a progress basis as work is completed. City shall prepare and deliver to HBIA and HBVFive a list describing the Shoreline Park Improvements and the Interior Park Improvements to be provided pursuant to paragraphs 2.1 and 2.2 of this Agreement prior to April 30, 1989. The parties shall reach

agreement regarding the list describing the park improvements prior to April 30, 1989. On a quarterly basis, City shall provide HBIA and HBVFive with an updated list describing the Shoreline Park Improvements and the Interior Park Improvements, which shall also include an accounting of the Park Improvement Fund, including all interest earned upon such collected funds, amounts expended, and progress made toward the items described on the list.

2.4. School Needs: Approximately eight acres of property are described on Exhibit G as the Interior School Site ("Interior School Site").

2.4.1. Mello-Roos: The parties are obligated under paragraph 3.1 of this Agreement to take all steps necessary to establish a Mello-Roos Community Facilities District ("Mello-Roos"). Within 10 business days of funds being available to the Mello-Roos, City shall purchase from HBIA the Interior School Site using such Mello-Roos funds.

2.4.2. Purchase Price: The purchase price of the Interior School Site is \$292,500 per gross acre (the 1980 fair market value). It is agreed and understood that the amount of the purchase price is less than the current fair market value of the fee simple interest in such property and reflects an adjustment as

a result of the conditional interest of HBVFive described in paragraph 2.4.5.

2.4.3. Purchase: HBIA shall sell and City shall purchase the Interior School Site in accordance with the provisions and conditions of this paragraph 2.4.3. HBIA and City shall open escrow (the "Escrow") with Placer Title Company ("Escrow Holder") and City shall deposit into the Escrow (1) the purchase price, in cash, from the Mello-Roos funds described in paragraph 3.1 and (2) escrow instructions (the "Escrow Instructions"). The Escrow Instructions shall state that, upon receipt of the purchase price and Escrow Instructions, Escrow Holder shall deliver written notice of their receipt to HBIA. Within 10 business days of HBIA's receipt of such written notice, HBIA shall deposit into the Escrow a grant deed, in substantial form and content as Exhibit H attached hereto, duly signed by HBIA, conveying title to the Interior School Site to City subject to the condition subsequent described in this subparagraph 2.4.3. The condition subsequent shall require an automatic transfer of title (subject only to the liens and encumbrances of record when HBIA conveys the Interior School Site to City and for no further consideration) to HBVFive in the event the Interior School Site is not used exclusively for the purposes of constructing and operating a public

school within ten years after the date of the conveyance of HBIA to City. The Escrow Instructions also shall state, upon receipt of the grant deed, Escrow Holder shall deliver the purchase price to HBIA and shall deliver the grant deed to the City after which the Escrow shall be deemed closed. The allocation of escrow costs shall be as customary.

2.4.4. Conveyance to School District: Within 30 business days of City's receipt of the grant deed for the Interior Site, City shall convey title to the Interior School Site, at cost, to the Alameda Unified School District ("School District"). The instrument conveying title to the School District shall include the transfer of title to HBVFive described in subparagraph 2.4.3 of this Agreement.

2.4.5. City's Right to Purchase; Transfer to HBVFive: If title is transferred to HBVFive as described in subparagraph 2.4.4, commencing upon the date title is transferred to HBVFive, City shall have 90 days to exercise a right to purchase the Interior School Site, or any portion thereof, from HBVFive for \$292,500 per acre. City's right to purchase shall be conditioned upon the requirement of approval of a City Council resolution setting forth immediate public use for the Interior School Site.

2.4.6. Units: If, within 90 days, City does not exercise such right to purchase, then, at HBVFive's option, HBVFive may submit an appropriate application to permit residential development of the Interior School Site at a density of no less than 5 units per acre. Residential units upon the Interior School Site shall be in addition to the 3000 units described in subparagraph 1.6. City shall process and consider such application as expeditiously as possible.

2.4.7. Satisfaction of Conditions: HBIA's and HBVFive's performance of the provisions contained in this shall be in complete satisfaction of Condition No. 5 of Planning Board Resolution 1806, pertaining to Tract 4499. Property Owners have agreed to dedicate land and pay fees for school facilities. So long as land is dedicated and fees are paid as provided in this Agreement, City shall not condition the issuance of building permits or the approval of any entitlements with respect to the Properties upon the issuance of a school availability letter or upon any other mitigation. City shall not seek other forms of mitigation with respect to school facilities in connection with the development of the Properties.

2.5. Lagoons:

2.5.1. Harbor Bay Lagoon System: The Harbor Bay Lagoon System is comprised of an existing lagoon

system ("Existing Lagoon System") as shown on Exhibit I and a new lagoon system to be constructed in accordance with the provisions and conditions contained in this paragraph in the general area described on Exhibit I ("New Lagoon System"). City acknowledges that the Existing Lagoon System and New Lagoon System have reduced and will reduce the extent of underground storm drainage facilities otherwise required to be maintained by the City for Villages I through V in the Harbor Bay Project.

2.5.2. Existing Lagoon System: Upon completion by HBIA of any corrective items required for the Existing Lagoon, HBIA's delivery of notice to the City stating that such items are completed, and dedication by Reclamation District No. 2105 to City as provided in this subparagraph, City shall assume complete responsibility for operation and maintenance of the storm drainage facilities related to the Existing Lagoon System. HBIA shall make best efforts to facilitate dedication by Reclamation District No. 2105 to City of ownership of all intake and outfall structures, associated pumps, electrical facilities, pipes, auxiliary equipment, and other equipment necessary for the Existing Lagoon System and dedication to City of an easement, upon reasonable terms, as needed to permit City operation and maintenance. City shall accept such ded-

ication within 30 days of Reclamation District No. 2105's delivery of an offer to dedicate.

2.5.3. New Lagoon System: Upon completion of the New Lagoon System by HBVFive according to plans and specifications approved by the City, HBVFive shall deliver to City an offer to dedicate to City the intake and outfall structures and associated pumps, electrical facilities, pipes, and auxiliary equipment and other equipment used in the operation. City shall accept such dedication within 30 days of HBVFive's delivery of the offer to dedicate. Upon acceptance of the offer to dedicate the New Lagoon System, City shall assume complete responsibility for operation and maintenance of the storm drainage facilities related to the New Lagoon System in accordance with the standards in effect on the effective date of this Agreement for the Existing Lagoon System and as appropriate to assure that the New Lagoon System operates and functions in accordance with the manner in which it is designed.

2.5.4. Maintenance of Lagoon Systems: The property used for the Existing Lagoon System has been and the property for the New Lagoon System will be dedicated by the appropriate Property Owner to the Community of Harbor Bay Isle Owners Association ("Association"). The parties to this Agreement contemplate that the Association shall be responsible for maintenance of

the Lagoon Systems for recreational and aesthetic purposes, including, without limitation, maintenance of water quality and of recreational paths along the lagoon banks upon provisions and conditions acceptable to Association and the Property Owners. City and the Property Owners shall use their best efforts to cooperate to make immediate arrangements for Property Owners' dedication and City's acceptance of easements for storm drainage purposes and assumption of associated maintenance.

2.6. Fire Station:

2.6.1. Design: No later than September 30, 1989, City shall, at its expense, prepare and deliver to HBVFive plans, including landscaping plans ("Design Plans") for a fire station and related site to serve the Harbor Bay Project and the properties. HBVFive acknowledges the fire station may include one room for use by the City police. City shall design the fire station and related site to require one acre or less of property. Prior to delivery of the Design Plans to HBVFive, City shall obtain the approval of the HBI Architectural Review Committee and HBVFive for the Design Plans of the exterior design of the fire station and the related site subject to subparagraph 2.6.4 of this Agreement.

2.6.2. Dedication: Within 90 days after receiving notice from the City of the HBI Architectural Review Committee approval of the Design Plans and the recordation of the final map containing the fire station site for Village V, HBVFive shall deliver to City an offer to dedicate a fire station site to accommodate such Design Plans, but in no event shall HBVFive's obligation for dedication under this paragraph 2.6 exceed one acre. The exact location of the fire station site shall be shown on the Vesting Tentative Map for Village V. City shall accept such offer to dedicate within 30 days of HBVFive's delivery of the offer to dedicate. HBVFive shall designate an amount of property equal in size to the difference between the size required by the fire station site and one acre as neighborhood open space. A Homeowner's Association shall maintain such open space to the standards applicable to other open space on the Village IV Property in effect on the date of this Agreement. Any condition relating to any requirement to designate property as open space in connection with the fire station site, shall be deemed satisfied with the approval of the Vesting Tentative Map for Village V.

2.6.3. Timing of Construction: City shall cause the commencement of construction of the fire station and the provision of landscaping on the dedicated

fire station site pursuant to the approved Design Plans by December 31, 1989, subject to the availability of allocated Mello-Roos funds described in paragraph 2.6.4 below and subject to approval of the Design Plan by the HBI Architectural Review Committee. City shall use its best efforts to complete construction of the fire station and installation of landscaping within 18 months after commencement of construction. City shall maintain the landscaping and the exterior design of the fire station in a manner compatible with adjacent improved properties. If construction of the fire station is not completed within 5 years from the date of HBV-Five's delivery to City of the offer to dedicate the fire station site, title to the fire station site shall revert to HBVFive. If title reverts to HBVFive, HBV-Five may submit an appropriate application to permit the development of a maximum of 12 residential dwelling units on the site. Residential dwelling units upon the fire station site shall be in addition to the 3000 units described in subparagraph 1.6.

2.6.4. Costs of Construction: City shall use Mello-Roos funds described under paragraph 3.1 of this Agreement, up to \$750,000, and any additional amounts mutually agreeable to City and HBVFive, to defray the costs of constructing, landscaping and furnishing, including all necessary fire equipment, the fire station.

In the event such costs of constructing, landscaping and furnishing exceed \$750,000, and any additional amounts mutually agreeable to City and HBVFive, City shall be solely responsible for such excess costs. City shall be entitled to such Mello-Roos funds on a progress basis as work is completed. In the event the HBI Architectural Review Committee requires an exterior design that exceeds the Village IV residential exterior design standards in effect on the date of this Agreement, HBVFive shall pay for the difference in construction costs required by such increased standards.

2.6.5. Satisfaction of Conditions: HBVFive's performance of the conditions and provisions of this paragraph 2.6. shall be in complete satisfaction of Condition 69 of Planning Board Resolution 1203 and Condition 69 of Planning Board Resolution 1533.

2.7. HB Maritime Docking Facility: If City reasonably determines that a rezone is needed, City shall process expeditiously the rezone of the site described on Exhibit J as "HB Maritime Facility" in order to permit the site to be used as a docking facility for ferry boats ("Maritime Docking Facility"). City shall process expeditiously appropriate applications and shall take all steps necessary or appropriate to assist HBIA in obtaining required approvals from other governmental agencies to permit the site to be used as a Maritime Docking Facility.

City acknowledges and agrees that prior to initiation of ferry service, McCartney Road will be extended to its terminus at the Bay. Access to the Maritime Docking Facility for residents of Bay Farm Island will be through a restricted gateway at the end of the extended McCartney Road. Access to the Maritime Docking facility for all others will be by way of Harbor Bay Parkway through the Business Park Property. Prior to initiation of ferry service, HBIA will provide, and shall have the right to relocate from time to time, a temporary access road through the Business Park Property connecting Harbor Bay Parkway at its current terminus to the Maritime Docking Facility. Upon development of the Business Park Property between Harbor Bay Parkway and the Maritime Docking Facility, HBIA will provide for a permanent access roadway to the Maritime Docking Facility through the Business Park Property.

2.8. Recreational Vehicles and Mini-Storage Area:

2.8.1. Gun Club Lease: City acknowledges that in the past City leased the approximately 5 acres of property described on Exhibit K as the Gun Club Site ("Gun Club Site") to Island City Gun Club, a nonprofit corporation ("Gun Club"). City hereby acknowledges that City has terminated the lease with the Gun Club. City shall, on or before April 4, 1989, execute a new Lease with HBIA or its assigns which lease shall be in

substantial conformance as to form and content with Exhibit L ("Lease").

2.8.2. Use of Gun Club Site

City and HBIA shall, by separate agreement, determine the extent of improvements, landscaping and maintenance and the allocation of space on the Gun Club Site among recreational vehicle parking, boat storage and mini-warehouse facilities based upon market demand. The facilities may be improved in phases based on market demand.

At the commencement of the operation of the facilities proposed on the Gun Club Site, HBIA shall make space available to the public. If HBIA determines that demand for the facilities exceeds capacity, residents of the Harbor Bay Project shall have priority. Residents of the City residing outside of the Harbor Bay Project shall be entitled to space on a first-in last-out basis.

2.8.3. Reservation in Business Park: For a six-year period commencing on November 3, 1988, HBIA shall reserve 3 acres of property in the Business Park for additional recreational vehicle parking, boat storage and mini-warehouse facilities if the facilities on the Gun Club Site are inadequate to serve the residential portion of the Harbor Bay Project. The exact location of such 3-acre parcel shall be determined by

HBIA and HBIA shall have the right to relocate such parcel from time to time.

2.8.4. Satisfaction of Conditions: HBIA's performance of the provisions contained in subparagraphs 2.8.1 through 2.8.3 shall be in complete satisfaction of Condition No. 16 of Planning Board Resolution No. 1203 approving Planned Development 81-2, pertaining to Tract 4500; Condition No. 4 of Planning Board Resolution 1806, as modified on appeal by the City Council, pertaining to Tract 4499; Condition No. 16 of Planning Board Resolution 950, pertaining to Tract 3810; and Condition 8(a) of Planning Board Resolution 1205 and any other provisions or conditions imposed upon the Property Owners relating to provision of a recreational vehicle parking, mini-warehouse and boat storage facilities. Subject to the provisions hereof, City acknowledges that HBIA shall not be required to construct the four acre recreational vehicle and mini-storage lot proposed by HBIA and approved as Final Development Plan FDP-88-4 by the Planning Board on August 22, 1988.

2.8.5. City's Cooperation: City shall accept and shall expeditiously process appropriate applications to enable HBIA to use the Gun Club Site as provided in this paragraph 2.8, including, without limitation, if necessary, a conditional use permit, amendment to zoning, or general plan amendment.

2.9. Traffic Improvements, Access and Infrastructure:

City shall enter into an Infrastructure Agreement, in substantial conformance as to form and content with Exhibit M ("Infrastructure Agreement"). City shall defray the costs of the improvement projects described in the Infrastructure Agreement as described therein.

2.10. Other Requirement: HBIA shall finance the construction of a cul-de-sac at the east end of Catalina Road based on a design mutually agreeable to the parties to this Agreement.

3. FINANCING OF PUBLIC IMPROVEMENTS:

3.1. Mello-Roos District: On or before April 4, 1989, City and HBVFive shall take all steps necessary to establish a Mello-Roos Community Facilities District ("Mello-Roos") to fund the items specified in this Agreement and such other facilities or fees as agreed to by City or HBVFive. Such funds may include \$1,800,000 for Village V school fees paid in advance in the event the Property Owners and School District have reached written agreement regarding the payment and use of such fees.

3.2. Traffic Improvement Taxes: City shall immediately create and segregate a special traffic improvement fund, pursuant to the Infrastructure Agreement which shall be in substantial conformance as to form and content as Exhibit M, to defray the costs of the improvement projects described in the Infrastructure Agreement, as described therein.

4. DEVELOPMENT OF THE PROPERTIES:

4.1. Permitted Uses: The Property Owners shall have the right to develop and use ~~their~~ respective Properties for residential, industrial, commercial, retail, recreational, open space, municipal, and related purposes as more particularly set forth in the Existing and Proposed Approvals, described on Exhibit D, and such other uses that may be ~~mutually~~ agreed upon by the parties hereto in accordance with the applicable provisions of the Government Code. City acknowledges that, from time-to-time, the Property Owners may seek to obtain, in accordance with the applicable provisions of state and local law, minor amendments to the Existing and Proposed Approvals without the need for an amendment to this Agreement. So long as an amendment to a development approval does not increase the overall density or intensity of use, an amendment shall be deemed a "minor amendment."

4.2. Permitted Density of Development: The Property Owners shall have the right to develop their respective Properties to the density or level of intensity indicated in the Existing Approvals for the Village V or the Properties or the Proposed Approvals for Village V, described on Exhibit D.

4.3. Maximum Height and Size of Structures: The Property Owners shall have the right to construct structures on their respective Properties to the maximum height and size

as governed by the Existing and Proposed Approvals described on Exhibit D.

4.4. Reservations or Dedications of Land for Public Purposes: Reservations or dedications of portions of the Properties for public purposes have been set forth in the Existing and Proposed Approvals described on Exhibit D.

4.5. Rules, Regulations, Official Policies: City rules, regulations, ordinances, laws, general plans, and official policies governing development, density, permitted uses, growth management, timing of development, environmental consideration, and design criteria for purposes of this Agreement shall be in force and effect upon the effective date of this Agreement.

4.6. Application of Subsequently Enacted Rules, Regulations, etc: City may, during the term of this Agreement, apply only such newer City enacted or modified rules, regulations, ordinances, laws, general or specific plans, and official policies which are not in conflict with those in effect on the effective date of this Agreement and application of which would not prevent development in accordance with paragraphs 4 and 5, and the anticipated schedule of residential development set forth on Exhibit N and the anticipated schedule of commercial development set forth on Exhibit O. However, this subparagraph shall not preclude the application to the Properties of changes in City laws,

regulations, plans, or policies specifically mandated and required by changes in state or federal laws or regulations.

4.7. Conflicting Rules, Regulations, etc.: In the event any existing or subsequently enacted rule, regulation, ordinance, law, general or specific plan, official policy, or public or private agreement, including without limitation the Existing and Proposed Approvals and Settlement Agreement I and Settlement Agreement II, conflicts with any term or provision of this Agreement, this Agreement shall govern.

4.8. Conditions Precedent: The Property Owners' responsibilities under this Agreement shall not take effect unless all of the following conditions are satisfied:

4.8.1. By its execution of this Agreement, City hereby agrees that conditions 3, 4 and 5 of Planning Board Resolution 1806 pertaining to Tract 4499 as modified on appeal by the City Council are deemed as satisfied by City.

4.8.2. On or before April 4, 1989, the City shall approve, and all approval periods shall have expired for, the Vesting Tentative Map with conditions of approval and certify as adequate and complete the environmental documentation for the Vesting Tentative Map, in a form which is and with conditions which are in the opinion of HBVFive consistent with the provisions of this Agreement;

4.8.3. On or before April 4, 1989, City shall issue building permits for the construction of the 42 single-family dwelling units for Tract 4499, and credit HBI with the sum of \$296,402.30 against the payment of building permit fees and taxes payable for the 42 units. Said sum is the amount reimbursable to HBI on the 54 units already paid by HBI to City;

4.8.4. City agrees it will not unreasonably withhold approvals and permits necessary for construction of a ferry terminal located at the end of McCartney Road between Village V and the Business Park, with limited access from McCartney Road and unlimited access from the Business Park, so long as such terminal can demonstrate a net benefit to City;

4.8.5. City agrees it will not unreasonably withhold the approvals for the method and the approvals and permits necessary for construction of a limited access roadway connection between Village V and the Business Park;

4.8.6. On or before April 4, 1989, City shall adopt necessary ordinances and regulations permitting start of work within five (5) business days after submittal of plans and specifications for tenant improvements. Such ordinances and regulations shall provide that if a permit is not issued by the date of the first

required City building inspection that the contractor will stop work or be subject to penalty fees;

4.8.7. On or before April 4, 1989, HBIA and City shall enter into the Infrastructure Agreement attached as Exhibit M, setting forth existing and anticipated future issues and problems involving access to the Harbor Bay Project and Bay Farm Island and the responsibilities of City and HBIA in regard to planning and funding solutions to those problems;

4.8.8. By its execution of this Agreement, City hereby agrees to delete the requirement of dedication of Parcel T, Block 7, in Tract 4500 as a condition of approval of Parcel Map 5274;

4.8.9. On or before April 4, 1989, City and HBVFive shall finalize any monitoring program required as a condition of approval of the Village V Property; and

4.8.10. On or before April 4, 1989, City shall execute the Ground Lease described as Exhibit L which provides that the construction of the recreational vehicle parking, boat storage and mini-warehouse storage facility on the Gun Club site, as set forth in paragraph 2.8 of this Agreement. This shall be deemed as satisfaction of all recreational vehicle, boat and mini-warehouse storage conditions previously imposed upon the Property Owners.

4.9. Conditions Satisfied: City acknowledges and agrees that the Property Owners' dedication of property, payment of fees and provision of improvements as described in this Agreement shall be in full and final satisfaction of the Property Owners' obligations under Settlement Agreements I and II and in full and final satisfaction of the conditions of approval of Tentative Maps no. 3810 and 4500, imposed in connection with the development of the Harbor Bay Project and the Property, for the following public facilities:

- 4.9.1. Parks;
- 4.9.2. Fire stations;
- 4.9.3. Open space;
- 4.9.4. Transportation and circulation;
- 4.9.5. Schools.

5. DEVELOPMENT PROGRAM:

5.1. Scheduling of Improvements: Scheduling, dates, or times of performance by the Property Owners shall be as described in the text of this Agreement and in the schedule of anticipated residential development set forth on Exhibit N and the schedule of anticipated non-residential development set forth on Exhibit O. The parties acknowledge that the Property Owners cannot at this time predict with specificity when or at what rate or in what order the Properties will be developed. It is anticipated, however, that the Properties will be developed in accordance with the schedules of antic-

ipated development attached hereto as Exhibits N and Exhibit O subject to modifications in the sole discretion of the Property Owners based upon their business judgment, changes in market orientation and demand, interest rates, competition and similar factors. Such revisions are deemed to be within the framework of this Agreement as presently drafted and executed and do not constitute amendments requiring new notice and hearing under local law. It is the intent of the parties to provide for the timing of development as specified in this section 5.1 as to cure the defect found by the California Supreme Court in Pardee Construction Co. vs. City of Camarillo, 37 Cal. 3rd 465 (1984) in which the Court held that the failure to the parties therein to provide for the timing of development resulted in an adopted initiative restricting the timing of development to prevail over the parties' agreement with regard to the development.

5.2. Moratoria; Delays; Suspension: So long as any Property Owner is not in default under this Agreement, City shall not impose any moratorium, delay or suspension on development approvals, building permits or any other governmental approvals or permits for the development of the Properties contemplated under this Agreement for any reason except for and only to the extent needed to avoid an eminent threat to the health and safety of existing and future inhabitants of the Properties. City shall have the obliga-

tion, based upon clear and convincing evidence, of establishing that: (a) the circumstances giving rise to such moratorium, delay or suspension were unknown, unforeseeable and could not have been known at the time of the approval of this Agreement; (b) the health and safety of the inhabitants of the Properties require the moratorium, delay or suspension to be applied to the Agreement as opposed to any other alternative; and (c) City has determined to provide the Property Owners with an equitable program to reimburse to the Property Owners the costs already incurred for the improvements and fees required to be provided under this Agreement. . . . able reimbursement for dedications or improvements not required by the extent of development as of the date of such moratorium, delay or suspension. Any such moratorium, delay or suspension shall only be applicable to the development contemplated under this Agreement to the extent needed to avoid the eminent threat to the health and safety of the existing and future inhabitants of the Properties.

5.3. Cooperation in Securing Government Permits: City shall accept from the Property Owners and shall process as expeditiously as possible all development applications for development permits or other entitlements for the use of the Properties and the Harbor Bay Project, including building permits, in accordance with this Agreement. City shall cooperate with the Property Owners in securing for the Proper-

ty Owners all permits which may be required by the City or any other governmental agency, including but not limited to an application or permit for ferry service. If necessary, City shall retain consultants, engineers, and other appropriate professionals review any plans, permit applications, or necessary approvals, at the appropriate Property Owner's expense, to meet that Property Owner's construction schedules and time frame.

§. ANNUAL REVIEW:

6.1. City and Property Owner Responsibilities: At least every 12 months during the term of this Agreement, City shall review the extent of good faith substantial compliance by the respective Property Owners with the terms of this Agreement, pursuant to Government Code Section 65865.1, as amended. City shall notify the Property Owners in writing of the date of the review at least 30 days prior thereto. The City and the Property Owners may address any requirement of this Agreement during the review. However, 10 days' written notice of any requirement to be addressed shall be made by the requesting party. If, at the time of review, an issue not previously identified arises, at the request of any party, the review shall be continued to afford sufficient time for analysis and preparation.

6.2. Opportunity to be Heard: Upon written request to City by a Property Owner, a Property Owner shall be permitted an opportunity to be heard orally, in writing or both at

a noticed public hearing regarding either party's performance under this Agreement. Any Property Owner may be heard before the City Council at any required public hearing concerning a review of action on the Agreement.

6.3. Information to be Provided to Property Owners:

The City shall, to such an extent as is practical, deposit in the mail to the Property Owners a copy of staff reports and related exhibits concerning contract performance a minimum of 10 calendar days prior to any such review or action upon this Agreement by or the City Council.

7. APPLICABLE LAW:

7.1. Conflict of City and Federal or State Laws: In the event that federal or state laws or regulations, enacted after the effective date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement may be modified as may be and to the extent necessary to comply with such federal or state laws or regulations, provided the following procedures are followed:

7.1.1. Notice and Copies: City shall provide the Property Owners with written notice of such federal or state restriction and provide a copy of such regulation or policy and a statement of conflict with the provisions of this Agreement.

7.1.2. Modification Conferences: The parties shall, within 30 days of the Property Owners' receipt

of notification, meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation in a manner consistent with the intent and objectives of this Agreement.

7.1.3. Council Hearings: After the modification conference, regardless of whether the parties reach an agreement on the effect of such federal or state law or regulation upon this Agreement, the matter shall be scheduled for hearing before the City Council. City shall give 10 days' written notice of such hearing pursuant to Government Code Section 65854.5. The City Council, at such hearing, shall determine (a) the extent to which such new federal or state law or regulation is in conflict with this Agreement, (b) the exact modification or suspension which shall be necessitated by such federal or state law or regulation and (c) the extent, if any, to which the Property Owners' obligation to provide public benefits hereunder should be reduced to conform to any reduction of allowable density or intensity of use or increase in costs of development. The Property Owners, at the hearing, shall have the right to offer oral and written testimony. Any modification or suspension (a) shall be consistent with the intent and objectives of this Agreement, (b) shall be only to the extent necessary to comply with such

federal or state law and (c) shall be taken by the affirmative vote of not less than a majority of the authorized voting members of the City Council. Any suspension or modification may be subject to judicial review in conformance with paragraph 8 of this Agreement.

7.2. Cooperation: City shall cooperate fully with the Property Owners in taking any actions and delivering documents necessary or convenient as a result of such modifications or suspensions, including without limitation the securing of any permits or consents required.

8. ENFORCED DELAY, DEFAULT, AND REMEDIES:

8.1. General Provisions: In the event of default or breach of this Agreement or of any of terms or conditions, the party alleging such default or breach shall give the breaching party and any non-defaulting party not less than 30 days' notice ("Notice of Default") in writing. The Notice of Default shall specify the nature of the alleged default and the manner and period of time in which said default may be satisfactorily cured. A party shall be considered to be in default under this Agreement only after the party alleging a default has provided written notice to the other of default, setting forth the nature of the default and the actions, if any, required to be taken by the defaulting party to cure such default and, where the default can be cured, the defaulting party has failed to take such actions and cure such default within 30 days after the ef-

fective date of such notice or, in the event that such default cannot be cured within such 30-day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 30-day period and diligently proceed to complete such actions and cure such default. If the default is cured, then no default shall exist and the noticing party shall take no further action. So long as any Property Owner is not in default under this Agreement (whether or not any other Property Owner is in default), the non-defaulting Property Owner shall have all rights and privileges under this Agreement.

8.2. Option to Institute Legal Proceedings: After proper notice and the expiration of said cure period, the party alleging default, at its option, may institute legal proceedings against the defaulting party.

8.3. Waiver: Failure or delay in giving Notice of Default pursuant to this paragraph shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or delay by the other party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

8.4. Default by City: In the event that City defaults on this Agreement, City agrees that the Property Owners in no event shall be obligated to proceed with or complete the development of the Properties or any portion thereof or pay the fees, dedicate the Property or provide the facilities to be provided by the Property Owners pursuant to this Agreement.

8.5. Enforced Delay, Extension of Time of Performance: In addition to specific provisions of this Agreement, performance by the Property Owners hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting federal or state laws or regulations, new or supplementary federal or state environmental regulations, delay or default caused by City, litigation, moratoria, or similar bases for excused performance. An extension of time for such cause shall be granted in writing for the period of the enforced delay or longer as may be mutually agreed upon. Such an extension shall commence to run from the time of commencement of cause.

8.6. Institution of Legal Action: In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any covenants or agreements herein or to enjoin any threat-

ened or attempted violation thereof; to recover damages for any default; or to obtain any remedies consistent with the purpose of this Agreement.

8.7. Specific Performance: The parties acknowledge and agree that money damages and remedies at law generally are inadequate and specific performance is a particularly appropriate remedy for the enforcement of this Agreement and should be available to both parties based upon the following reasons:

8.7.1. Assurances: The Property Owners' obligations provided for in this Agreement were bargained for by City and given in return for assurances by City to the Property Owners regarding the regulations that would be applicable to the development of the Properties, which assurances were in turn relied upon by the Property Owners in undertaking the Property Owners' obligations pursuant to this Agreement.

8.7.2. Ability to Use Property: Due to the size, nature, and scope of the Harbor Bay Project, in general, and the Properties, specifically, it may not be practical or possible to restore the Properties and other properties subject to this Agreement to their natural condition once implementation of this Agreement has begun. The Property Owners may be foreclosed from other choices it may have had to utilize the Properties. The Property Owners have invested significant

time and resources and performed extensive planning and processing of the Harbor Bay Project in general and the Properties specifically in reliance upon the terms of this Agreement. It is not possible to determine the sums of money which would adequately compensate the Property Owners for such efforts.

8.7.3. Damages: It is possible that the Property Owners will be unable to recover and receive back their capital investment in the public facilities to be provided to City as part of Property Owners' obligations and to replan and provide for different uses of the Properties and the Harbor Bay Project subject to this Agreement once such facilities and infrastructure have been completed.

8.8. Applicable Laws/Attorneys' Fees: This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any action be brought in any court of competent jurisdiction, the prevailing party in such action shall be entitled to recover all attorney's fees, court costs, and necessary disbursements in connection with such litigation.

9. ENCUMBRANCES AND RELEASES ON REAL PROPERTY:

9.1. Discretion to Encumber: The parties hereto agree that this Agreement shall not prevent or limit a Property Owner, in any manner, at that Property Owner's sole discretion, from encumbering its Property or property in the Har-

bor Bay Project or any portion of any improvement thereon by any mortgage, deed of trust, or other security device securing financing with respect to such Property and property in the Harbor Bay Project. City acknowledges that the lenders providing such financing may require certain modifications and City agrees, upon request, from time-to-time, to meet with the Property Owner and/or representatives of such lenders to negotiate in good faith any such request for modification. City further agrees that it will not unreasonably withhold its consent to any such requested modification.

9.2. Entitlement to Written Notice of Default: City acknowledges and agrees that the mortgagee of a mortgage or beneficiary of a deed of trust, and their successors and assigns, on any mortgage or deed of trust encumbering the Properties or property in the Harbor Bay Project, or any part thereof, which mortgagee, beneficiary, successor, or assign has requested in writing to City, shall be entitled to receive written notification from City of any default a Property Owner in the performance of such Property Owner's obligations under this Agreement which is not cured within 30 days.

9.3. Property Subject to Pro Rata Claims: Any mortgagee who comes into possession of a Property or property in the Harbor Bay Project pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property or property in the Harbor Bay

Project subject to any pro rata claims for payments or charges against the Property or property in the Harbor Bay Project secured by such mortgages which accrue prior to the time such mortgagee comes into possession of the Properties or property in the Harbor Bay Project.

10. MISCELLANEOUS PROVISIONS:

10.1. Term of Agreement: The effective date of this Agreement shall be April 4, 1989. This Agreement shall expire 30 years from its effective date, unless extended by written mutual agreement. City and the Property Owners acknowledge that the California Subdivision Map Act (California Government Code section 66410, et seq.) contains certain periods for the expiration and extension of tentative maps and tentative parcel maps. The term of this Agreement shall not extend or reduce such periods.

10.2. Assignment and Delegation: The Property Owners shall have the right to assign their respective rights and delegate their respective duties under this Agreement provided that any such assignment or delegation is in compliance with the following provisions:

10.2.1. Part of Transfer of Property: The assignment or delegation is made as part of the transfer, assignment, sale or lease of all or a portion of the Property or property in the Harbor Bay Project.

10.2.2. Assignment of Rights: An assignment of a Property Owner's rights under this Agreement shall be

effective upon delivery by the assigning Property Owner or the assignee to City of a notice of such assignment.

10.2.3. Delegation of Duties: A delegation of a Property Owner's duties under this Agreement shall be effective upon delivery by the delegating Property Owner or the delegee to City of notice of such delegation and a written assumption of such duties signed by the delegee.

10.2.4. Inurement: During the term of this Agreement, any such assignee or delegee shall observe and perform all c and obligations of the appropriate Property Owner contained in this Agreement as such duties and obligations pertain to the portion of the Property so transferred or assigned.

10.3. Amendment or Cancellation of Agreement: This Agreement may be amended from time-to-time by the mutual consent of the parties hereto but only in the same manner as its adoption by an ordinance as set forth in Government Code Sections 65867, 65867.5, and 65868 and Alameda Municipal Code Chapter 6. The term "this Agreement" or "Development Agreement" herein shall include any such amendment properly approved and executed.

10.4. Enforcement: Unless amended or cancelled as specifically provided in this Agreement, this Agreement is enforceable by any party to it despite a change in the applicable general or specific plans or zoning or subdivision

rules, regulations, or policies adopted by City by ordinance, resolution, policy, initiative, or referendum or otherwise applicable to City which alters or amends the rules, regulations, or policies governing permitted uses of the land, density, and design.

10.5. Rules of Construction: The masculine gender includes the feminine; "shall" is mandatory, and "may" is permissive.

10.6. Severability: The parties hereto agree that the provisions are severable. If any provision of this Agreement is held invalid, the remainder of this Agreement shall be ~~and~~ shall remain in full ~~and~~ effect unless amended or modified by mutual consent of the parties.

10.7. Entire Agreement; Waivers; and Amendments:
This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof, including, without limitation, the Dwelling Unit Tax Agreement, Settlement Agreement I and Settlement Agreement II. All waivers of the provisions of this Agreement must be in writing and signed by all parties to this Agreement. All amendments hereto must be in writing signed by all parties to this Agreement in a form suitable for recording in the Office of the Recorder, County of

Alameda. Within 10 days of the effective date of this Agreement and of subsequent amendment hereto, City shall cause a copy to be recorded in the official records of Alameda County, California. Upon the completion of performance of this Agreement or its earlier revocation and termination, City shall record a statement evidencing said completion or revocation, signed by the appropriate agents of the Property Owners and the City, in the official records of Alameda County, California.

10.8. Private Undertaking: It is specifically understood and agreed to by and between the parties hereto that: (1) the development on the Properties is a private development; and (2) the Property Owners shall have full power over and exclusive control of their respective Properties herein described, subject only to the limitations and obligations of such Property Owner under this Agreement.

10.9. Incorporation of Recitals and Exhibits: The recitals and exhibits are specifically incorporated into this Agreement.

10.10. Notices: Any notice, demand, or request given pursuant to this Agreement shall be deemed to be delivered when personally served or 2 business days after such notice is deposited in the United States mail, postage fully prepaid, registered or certified mail, return receipt requested, addressed to the respective party to whom the notice is being given at the address set forth below or at

such other address as the respective party may from time to time designate by written notice given pursuant to this paragraph:

To City: The City of Alameda
Santa Clara at Oak Street
Alameda, California 94501

To HBIA: Harbor Bay Isle Associates
c/o Doric Development, Inc.
1141 Harbor Bay Parkway
Alameda, California 94501
Attention: President

To HBVFour: Harbor Bay Village Four Associates
c/o Doric Development, Inc.
1141 Harbor Bay Parkway
Alameda, California 94501
Attention: President

To HBVFive: Harbor Bay Village Five Associates
c/o Doric Development, Inc.
1141 Harbor Bay Parkway
Alameda, California 94501
Attention: President

Copy to: James R. Dawe
3003 Fourth Avenue
San Diego, California 92103

Copy to: Home Capital Corporation
625 Broadway
7th Floor
San Diego, California 92101
Attention: Tim Waters, Esq.

Copy to: Home Capital Corporation
2400 Venture Oaks Way
Suite 300
Sacramento, California 95833
Attention: Project Manager

10.11. Further Assurances: Each party shall perform any further acts and execute and deliver any additional documents which may be reasonably necessary in the opinion of either party to carry out the provisions of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the day and year first above written, as authorized by Ordinance No. O- 2426, N.S. of the City Council.

THE CITY OF ALAMEDA,
a municipal corporation

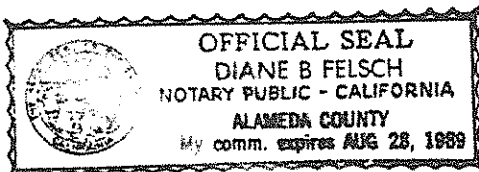
By: Chuck Paris
CITY Manager MAYOR

STATE OF CALIFORNIA)
COUNTY OF Alameda) ss.

On April 5, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Chuck Paris personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the CITY Manager, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument and to me that such corporation executed the within instrument in accordance to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Diane B. Felsch
Notary Public



HARBOR BAY ISLE ASSOCIATES,
a California General Partnership

By: Doric Development, Inc.,
a California corporation

Its: General Partner

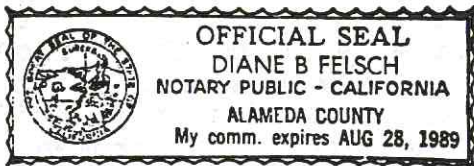
By: Spix B. Hall
Its: EXECUTIVE VICE PRES

STATE OF CALIFORNIA)
COUNTY OF Alameda) ss.

On April 5, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Stephen K. Brimhall, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as General Partner, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

WITNESS my hand and official seal.

Diane B. Felsch
Notary Public



HARBOR BAY VILLAGE FOUR ASSOCIATES,
a California limited partnership

By: Doric Development, Inc., a
California corporation

Its: General Partner

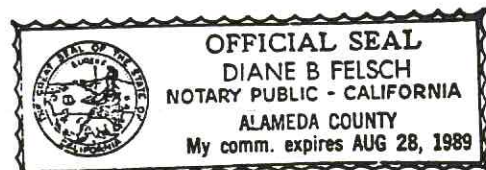
By: Paul Weidkamp
Its: See Vice Pres.

STATE OF CALIFORNIA)
COUNTY OF Alameda) ss.

On April 5, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Paul Weidkamp, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as General Partner, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

WITNESS my hand and official seal.

Diane B. Felsch
Notary Public



By: Home Capital Corporation
a California corporation
Its: General Partner

By: Jaqueline Kay
Its: Project Manager

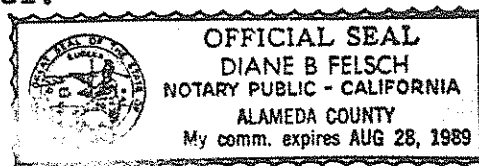
By: Art Cornman
Its: Regional Director

STATE OF CALIFORNIA)
COUNTY OF Alameda) ss.

On April 5, 1989 before me, the undersigned, a
Public in and for said State, personally appeared
Jaqueline K. Coley known to me or proved to
me on the basis of satisfactory evidence to be the person who
executed the within instrument as the General Partner, personally
known to me or proved to me on the basis of satisfactory evidence
to be General Partner of the Corporation that executed the within
instrument and acknowledged to me that such corporation executed
the within instrument pursuant to its by-laws or a resolution of
its board of directors.

WITNESS my hand and official seal.

Diane B. Felsch
Notary Public

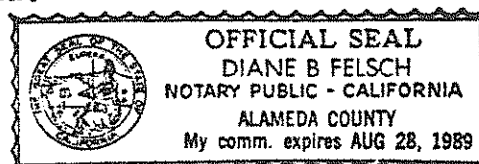


STATE OF CALIFORNIA)
COUNTY OF Alameda) ss.

On April 5, 1989 before me, the undersigned, a
Notary Public in and for said State, personally appeared
Art Cornman known to me or proved to
me on the basis of satisfactory evidence to be the person who
executed the within instrument as the General Partner, personally
known to me or proved to me on the basis of satisfactory evidence
to be General Partner of the Corporation that executed the within
instrument and acknowledged to me that such corporation executed
the within instrument pursuant to its by-laws or a resolution of
its board of directors.

WITNESS my hand and official seal.

Diane B. Felsch
Notary Public



HARBOR BAY VILLAGE FIVE ASSOCIATES,
a California limited Partnership

By: Doric Development, Inc., a
California corporation

Its: General Partner

By: Paul Weiskamp

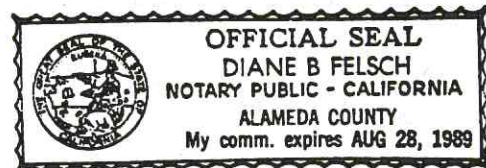
Its: Si-Vine P.D.s.

STATE OF CALIFORNIA)
COUNTY OF Alameda) ss.

On 4-5-89, before me, the undersigned, a Notary Public in and for said State, personally appeared Paul Weiskamp personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as General Partner, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

WITNESS my hand and official seal.

Diane B. Felsch
Notary Public



By: Home Capital Corporation, a
California corporation

Its: General Partner

By: Jacqueline S.

Its: Project Manager

By: Art C. Cunningham

Its: Regional Director

STATE OF CALIFORNIA)

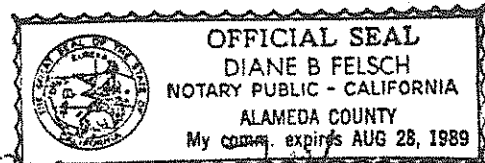
COUNTY OF Alameda)

SS.

On April 5, 1989 before me, the undersigned, a Notary Public in and for said State, personally appeared Jacqueline K. Doherty & Art Bernamy, known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the General Partner personally known to me or proved to me on the basis of satisfactory evidence to be General Partner of the Corporation that executed the within instrument and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Diane B. Felsch
Notary Public



I HEREBY APPROVE the form and legality of the foregoing Agreement this 5 day of April, 1989

[Signature]
City Attorney

STATE OF CALIFORNIA)

COUNTY OF Alameda)

SS.

On April 5, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Bruce Dean, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed it.

WITNESS my hand and official seal.

Diane B. Felsch
Notary Public

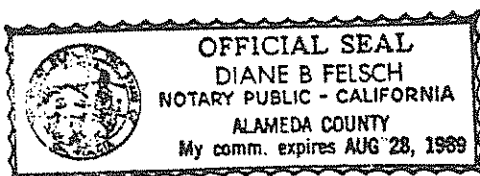


TABLE OF EXHIBITS

Exhibit A:	The Description of Properties
Exhibit B:	Description of Harbor Bay Project
Exhibit C:	Responsibilities of Property Owners for Public Facilities
Exhibit D:	Existing and Proposed Approvals
Exhibit E:	Description of areas to be dedicated for Shoreline Park
Exhibit F:	Description of Interior Park Land
Exhibit G:	Description of Interior School Site
Exhibit H:	Grant Deed for School
Exhibit I:	Description of Harbor Bay lagoon system
Exhibit J:	Maritime Docking Facility
Exhibit K:	Gun Club Site
Exhibit L:	Gun Club Lease
Exhibit M:	Infrastructure Agreement
Exhibit N:	Schedule of Residential Development
Exhibit O:	Schedule of Non-Residential Development

THE DESCRIPTION OF THE PROPERTIES

Those parcels of land in the City of Alameda, County of Alameda, State of California, described as follows:

Village IV:

Lots 1 through 42 include, Parcels A, B, C, D, and E, Tract 4499, filed December 13, 1988. Map Book 179 OR, Page 97, Alameda County Records.

Village V:

PARCEL 1:

Parcel 2, Parcel Map No. 4043, filed May 20, 1983, Book 138 of Parcel Maps, pages 40 and 41, Alameda County Records.

EXCEPTING THEREFROM: All that portion thereof described in the deed to Doric Development, Inc., a California corporation, recorded July 1, 1986, Series No. 86-157055.

PARCEL 2:

Those parcels of land described in the deed to Harbor Bay Isle Associates, recorded July 1, 1986, Series No. 86-157054.

HARBOR BAY BUSINESS PARK

Those parcels of land in the City of Alameda, County of Alameda, State of California, described as follows:

PARCEL A:

Parcels 1 through 34 and 36, Parcel Map 8274, filed February 29, 1988, Parcel Map Book 176, Page 4, Alameda County Records.

A.P.N. 74-1339-010
A.P.N. 74-1040-025
A.P.N. 74-1040-026
A.P.N. 74-1040-027

PARCEL B:

Parcel 2, Parcel Map 4238, filed October 17, 1984, Parcel Map Book 146, Page 89, Alameda County Records.

A.P.N. 74-1337-5

PARCEL C:

Parcel 2, Parcel Map 4124, filed September 13, 1983, Parcel Map Book 141, Page 8, Alameda County Records.

A.P.N. 74-1333-17-2

PARCEL C-1:

An easement for ingress and egress and utilities over that portion described as "Basement B" on Parcel Map 4124, filed September 10, 1983, Parcel Map Book 141, Page 8, Alameda County Records.

PARCEL D:

Parcel 4, Parcel Map 4507, filed February 13, 1985, Parcel Map Book 152, Page 21, Alameda County Records.

A.P.N. 74-1333-21

PARCEL E:

Parcel 1, Parcel Map 4507, filed February 13, 1985, Parcel Map Book 152, Page 21, Alameda County Records.

A.P.N. 74-1333-18

HARBOR BAY BUSINESS PARK - CONTINUED

PARCEL F:

Parcels 5 and 6, Parcel Map 4013, filed April 12, 1983, Parcel Map Book 138, Page 5, Alameda County Records.

A.P.N. 74-1333-8

A.P.N. 74-1333-9

PARCEL G:

Parcel 4, Parcel Map 4112, filed September 13, 1983, Parcel Map Book 141, Page 10, Alameda County Records.

EXCEPTING THEREFROM:

Beginning at an angle point in the boundary line between Parcels 3 and 4, said Parcel Map 4112, at the southerly terminus of a course having a bearing and distance of north 17° 37' 47" west, 76.72 feet; thence from said point of beginning along the said boundary line the two following courses and distances: north 17° 37' 47" west, 76.72 feet; and north 72° 22' 13" east, 27.60 feet; thence south 17° 37' 47" east, 76.72 feet; thence south 72° 22' 13" west, 27.60 feet to the point.

A.P.N. 74-1333-15-3

EXHIBIT A

HARBOR BAY BUSINESS PARK - CONTINUED

REAL PROPERTY in the City of Alameda, County of Alameda, State of California, described as follows:

Parcel 1, Parcel Map 4728, filed APRIL 30, 1986, Map Book 159, Page 94, Alameda County Records.

Parcels 2 and 3, Parcel Map 4507, filed February 13, 1985, Map Book 152, Page 21, Alameda County Records.

Parcels 1 through 5 inclusive, Parcel Map 4586, filed April 29, 1985, Map Book 154, Page 11, Alameda County Records.

1,31-1141

LEGAL DESCRIPTION

HARBOR BAY BUSINESS PARK - CONTINUED

REAL PROPERTY in the City of Alameda, County of Alameda, State of California, described as follows:

PARCEL ONE:

Parcel 3, Parcel Map 4112, filed September 13, 1983, Map Book 141, Page 10, Alameda County Records.

EXCEPTING FROM PARCEL ONE:

That portion thereof described as follows:

Beginning on the boundary line between Parcels 2 and 3 at the northwesterly boundary of said Parcel Map 4112; thence from said point of beginning South 17° 37' 47" East along the boundary line between said Parcels 1 and 2, 121.63 feet; thence North 72° 22' 13" East, 32.31 feet; thence North 17° 37' 47" West, 140.82 feet to the northwesterly boundary of said Parcel Map 4112; thence South 41° 39' 21" West, along said northwesterly boundary line, 37.58 feet to the point of beginning.

PARCEL TWO:

Portion of Parcel 2, Parcel Map 4112, filed September 13, 1983, Map Book 141, Page 10, Alameda County Records, described as follows:

Commencing on the boundary line between Parcels 2 and 3 at the northwesterly boundary line of said Parcel Map 4112; thence from said point of commencement, South 17° 37' 47" East, along the boundary line between said Parcels 1 and 2, 121.63 feet to the actual point of beginning; thence from said point of beginning, continuing along said boundary line, the three following courses and distances: South 17° 37' 47" East, 122.00 feet; South 72° 22' 13" West, 18.36 feet; and South 17° 37' 47" East, 176.00 feet to an angle point therein; thence South 72° 22' 13" West, 22.40 feet; thence North 17° 37' 47" West, 176.00 feet; thence North 72° 22' 13" East, 40.76 feet to the point of beginning.

PARCEL THREE:

Portion of Parcel 4, Parcel Map 4112, filed September 13, 1983, Map Book 141, Page 10, Alameda County Records, described as follows:

Beginning at an angle point in the boundary line between Parcels 3 and 4, said Parcel Map 4112, at the southerly terminus of a course having a bearing and distance of "N 17° 37' 47" W, 76.72"; thence from said point of beginning along the said boundary line the two following courses and distances: North 17° 37' 47" West, 76.72 feet; and North 72° 22' 13" East, 27.60 feet; thence South 17° 37' 47" East, 76.72 feet; thence South 72° 22' 13" West, 27.60 feet to the point of beginning.

LEGAL DESCRIPTION (continued..)

HARBOR BAY BUSINESS PARK - CONTINUED
PARCEL FOUR:

Rights reserved in the Grant of Easement to the City of Alameda, recorded March 19, 1982, Series No. 82-039799, Official Records.

RESERVING FROM PARCELS ONE THROUGH THREE:

Reserving to the Grantor and its successors and assigns, all overlying and other water rights, including, without limitation, the right to appropriate water and distribute it to other property without any right to the use of or rights in or to any portion of the surface of said land. The owner of the reserved water rights, however, covenants that it will not exercise the rights reserved over the surface of the property described above or within the subsurface of such property above a depth of 100 feet below the surface of said property. Breach of the foregoing covenant shall not, however, terminate or forfeit the rights so reserved, but injunctive relief may be sought and obtained to prevent or remedy any such breach;

And, reserving, further, to the Grantor and its successors and assigns all oil, gas, mineral, geothermal, and hydrocarbon substances in and under or that may be produced below a depth of 500 feet below the surface of said property without any right of entry upon the surface of said land for the purposes of mining, drilling, exploring or extracting such oil, gas, mineral, geothermal, or hydrocarbon substances and, except as provided above with respect to water rights, without any right to the use of or rights in or to any portion of the surface of said land to a depth of 500 feet below the surface thereof.

A.P.Nos.: 74-1333-13
74-1333-14
74-1333-15

When Recorded,
Please return to:
City Clerk, City Hall
2263 Santa Clara Ave.
Alameda, CA 94501

EXTENSION AND MODIFICATION AGREEMENT

THIS AGREEMENT is entered into this 20th day of December, 1989 by and between the CITY OF ALAMEDA, a municipal corporation of the State of California ("City"), and HARBOR BAY ISLE ASSOCIATES, a general partnership, HARBOR BAY VILLAGE FOUR ASSOCIATES, a general partnership, and HARBOR BAY VILLAGE FIVE ASSOCIATES, a general partnership (collectively "HBI").

WHEREAS, City and HBI entered into a ^{Development} ~~Settlement~~ Agreement ~~on~~ ^{effective April 4, 1988} ("Agreement"); and SKB
CJA

City and HBI wish to extend the time period for taking certain actions under the ~~Settlement~~ Agreement; SKB
CJA

NOW, THEREFORE, in consideration of the mutual promises and actions contained herein, the parties agree:

1. That Section 2.2.2 of the Agreement shall be amended to substitute completion of design of improvements for commencement of such improvements, and to extend the time for completion of such design to January 30, 1990.

2. That Section 2.6.3 of the Agreement shall be amended to extend the time for commencing construction of the Fire Station from December 31, 1989 to March 31, 1990.

RESIDENTIAL DEVELOPMENT SCHEDULE

The following table shows the annual development forecast by calendar year for the residential land uses currently approved and proposed.

Residential Dwelling Units per year under construction								
YEAR	VILLAGE IV [1]		Total VILLAGE IV	VILLAGE V - "A" "B" "C" "D" [2]				Total VILLAGE V
	Woodbridge	Pelican Bay		"A"	"B"	"C"	"D"	
1989	72		116	24	55	60	35	174
1990	0		0	40	50	85	93	268
1991	0		0	24	50	62		136
1992	0		0	0	53	0		53
	72	44	116	88	208	207	128	631

[1] Currently approved

[2] Per Proposed Visting Tentative Map for Tract 5905

Any units not built in the designated year
may be accumulated and built in a
subsequent year.

NON-RESIDENTIAL DEVELOPMENT SCHEDULE

The following table show the annual development forecast by calendar year for the non-residential land uses currently approved for Harbor Bay Business Park.

Non-Residential Acres Per Year Under Construction		
<u>Year</u>	<u>HBBP</u>	<u>Other</u>
Prior Years Total	131.7	
1989	20.0	Plus Community Site and Church Site at Harbor Bay Landing
1990	20.0	
1991	20.0	
1992	20.0	
1993	20.0	
1994	20.0	
1995	20.0	
1996	20.0	
1997	20.0	
1998	2.3	
	314.0	

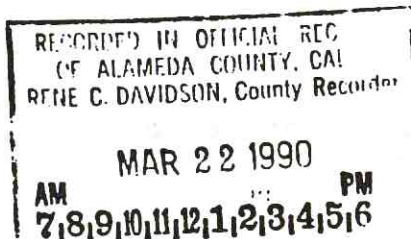
acreage not developed in indicated year may be accumulated
and developed in subsequent year

CITY OF ALAMEDA,
a municipal corporation

APPROVED AS TO FORM:

E. J. Mack
City Attorney

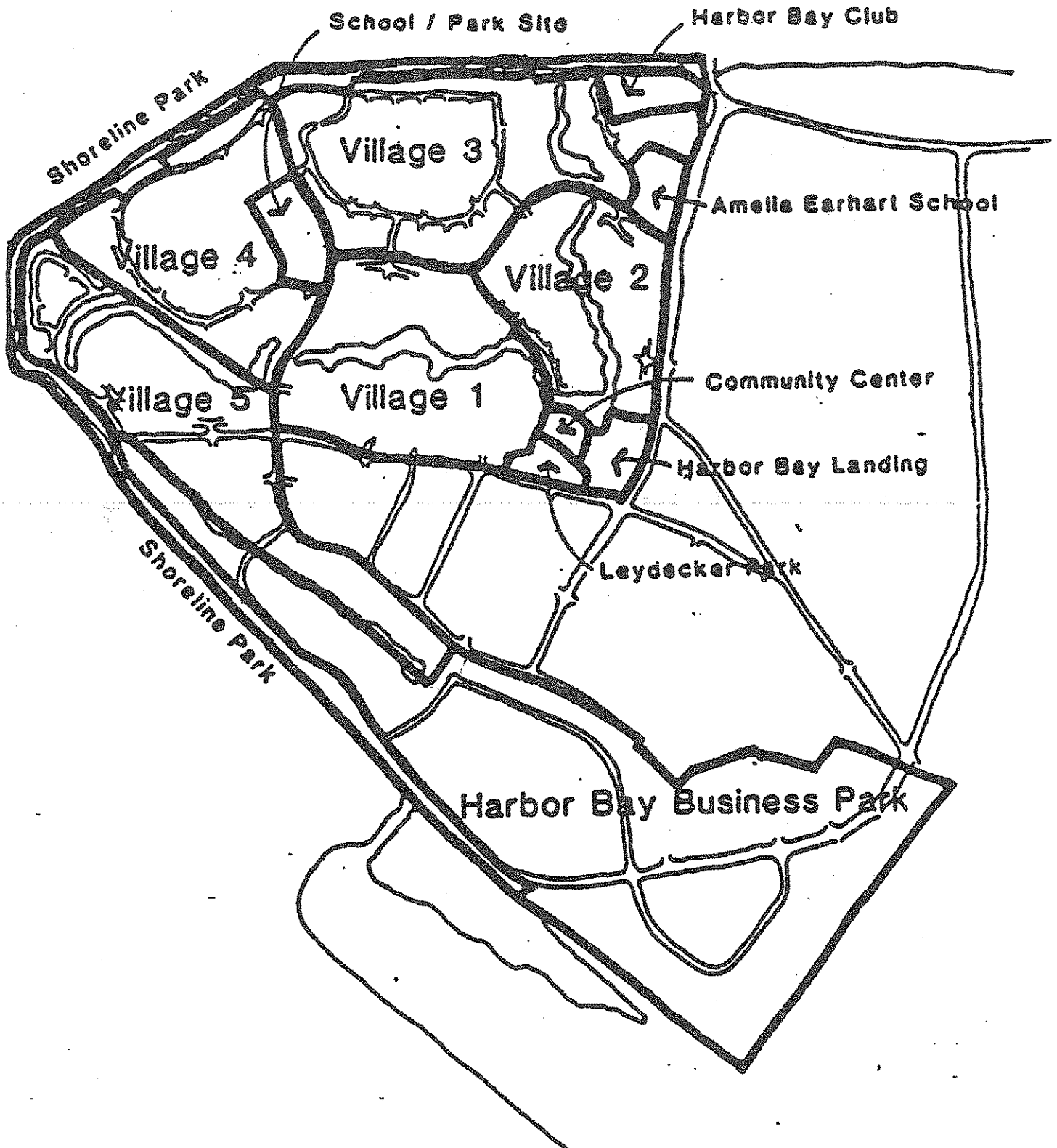
ATTEST:

Diane E. Litch
City ClerkAuthorized by Council
Ordinance No. 2470
on January 2, 1990.

A

By: [Signature]Its MayorDated March 9, 1990HARBOR BAY ISLE ASSOCIATES, a
general partnershipBy DORIC DEVELOPMENT, INC.,
General PartnerBy: [Signature]Its EXEC VICE PRESHARBOR BAY VILLAGE FOUR ASSOCIATES,
a general partnershipBy DORIC DEVELOPMENT, INC.,
General PartnerBy: [Signature]Its EXEC VICE PRESHARBOR BAY VILLAGE FOUR ASSOCIATES,
a general partnershipBy DORIC DEVELOPMENT, INC.,
General PartnerBy: [Signature]Its EXEC VICE PRESDated February 27, 1990

DESCRIPTION OF
HARBOR BAY PROJECT



**PUBLIC AND OTHER FACILITIES TO BE PROVIDED BY THE PROPERTY OWNERS
AND FINANCING DISTRICTS**

<u>Public Facility</u>	<u>Entity</u>
Dedicate Fire station Site	HBV5
Contribute \$750,000 for Fire station Construction	Mello-Roos on HBV5 property
Dedicate \$2,340,000 for School Site Acquisition	Mello-Roos on HBV5 property
Dedicate 4 acres for Interior Park	HBIA
Dedicate Shoreline Park Phase III-B	HBIA
Dedicate Shoreline Park Phase IV	HBV5
Contribute \$900/unit for Dwelling Unit Tax	Mello-Roos on HBV5 property
Contribute \$650,000 for Park Landscaping	Mello-Roos on HBV5 property
Contribute \$300,000 for Park Landscaping	Future Assessment District or Future Mello-Roos in Business Park
<u>Other Facility</u>	<u>Entity</u>
Construction of RV/Boat/Mini Storage Facility on Gun Club Site	HBIA
Reservation of 3 acres for RV/Boat/Mini Storage in HBBP	HBIA

EXISTING AND PROPOSED APPROVALS

Existing Approvals for Currently Undeveloped Property

I. 42 Units in Tract 4499, Village 4 (Phases 9 and 10 of Pelican Bay)

APPROVALS:

- (1) Planned Development Amendment PDA-87-6:
(Application and Planning Board
Resolution PDA-87-6).
- (2) Vesting Tentative Map for Tract 4499:
(Application and City Council
Resolution).
- (3) Final Map for Tract 4499 (Signed and
Recorded).
- (4) Final Development Plan for Phase 9 and 10
of Pelican Bay (Application and Planning
Board Resolution).

PERMITTED USES: Residential units and designated common areas.

DENSITY-INTENSITY OF USE:

Maximum of 42 units within Tract 4499.

MAXIMUM HEIGHT OF BUILDINGS:

2 stories.

SIZE OF BUILDINGS:

Pelican Bay models, as illustrated on approved
Final Development Plan for Phases 9 and 10 of
Pelican Bay.

LANDS FOR PUBLIC USE: Public Streets.

II. Unbuilt Lots in Tract 4288, Village IV (Promontory)

APPROVALS:

- (1) Planned Development 77-5: (Application
and Planning Board Resolution No. 950).
- (2) Tentative Map for Tract 3810:

(Application and City Council Resolution No. 8970, incorporating Planning Board Resolution No. 963).

- (3) Final Map for Tract 4288 (Signed and recorded).
- (4) Final Development Plans for individual lots of Promontory approved by Planning Board.

PERMITTED USES: Custom homes and designated common areas.

DENSITY-INTENSITY OF USES: Maximum of 33 homes within Tract 4288.

MAXIMUM HEIGHT OF BUILDINGS: 3 stories on lots adjoining Sea View Parkway, subject to design conditions; 2 stories on remaining lots.

SIZE OF BUILDINGS: Building coverage and setback standards as illustrated on approved PD for Tract 3810 and on approved Final Development Plans for individual lots.

LANDS FOR PUBLIC USE: None. Adjoining Shoreline Park and Sea View Parkway already dedicated to City.

III. Village 5 (839 Units in Tract 4500)

- APPROVALS:**
- (1) Village 5 portion of Planned Development PDA-81-2: (Application Plans prepared by Anshen & Allen; Planning Board Resolution No. 1203, Conditions 4-43).
 - (2) Village 5 portion of Tentative Map for Tract 4500: (Map prepared by JTA; Planning Board Resolution No. 1205, City Council Resolution No. 9665).

PERMITTED USES: Residential uses and designated common areas.

**DENSITY-INTENSITY
OF USE:**

(1) Originally approved for 863 units in 122.3 gross acres; 24 units subtracted by transfer to Brittany Project, leaving 839 units.

(2) Density: Net Acreage Per Neighborhood:

<u>Neighborhood</u>	<u>Net Acres</u>	<u>No. of Homes</u>	<u>Homes Per Acre</u>
"A"	18.2	197	10.8
"B"	34.5	306	8.9
"C"	20.6	176	8.5
"D"	<u>17.0</u>	<u>160</u>	<u>9.4</u>
TOTALS	90.3	839	
AVERAGE			9.3

**MAXIMUM HEIGHT
OF BUILDINGS:**

3 stories in certain locations; 1.5 stories along Bay edge and lagoon edge lots except for stacked duplexes.

SIZE OF BUILDINGS:

"Average lot coverage in each Neighborhood shall not exceed 48%. A maximum building coverage of 55% shall be permitted on individual lots except in Bayside and lagoon-edge lots in Neighborhoods A and C where a maximum building coverage of 55% shall be permitted." (Planning Board Resolution No. 1203, Condition No. 5).

LANDS FOR PUBLIC USE: Public Streets and portion of Shoreline Park.

IV. Harbor Bay Business Park in Tract 4500

(Approximately 191.6 acres of open land plus remaining buildings in International Teleport Plaza and Satellite Bay projects.)

APPROVALS:

(1) Business Park portion of Planned Development PDA-81-2: (Application Plans prepared by Anshen & Allen; Planning Board Resolution No. 1203, Conditions Nos. 44-71).

- (2) Business Park portion of Tentative Map for Tract 4500: (Map prepared by JTA: Planning Board Resolution No. 1205, City Council Resolution No. 9665).
- (3) Approved Final Development Plans for International Teleport Plaza and Satellite Bay projects.

PERMITTED USES:

Office, Research and Development, light industrial, and retail commercial; uses permitted within CM-PD zoning district.

**MAXIMUM HEIGHT
OF BUILDINGS:**

Buildings up to the heights described in the height limit zones of 33 feet, 50 feet, 100 feet, and 156 feet with a variance, as set forth in the PD application prepared by Anshen & Allen as qualified by the matrix in condition no. 44 of Planning Board Resolution No. 1203 for Tract 4500 and as modified by Planning Board Resolution No. 1533..

**DENSITY-INTENSITY
OF USE AND
SIZE OF BUILDINGS:**

- (1) Maximum building coverage by lot size categories designated in the PD Plans prepared by Anshen & Allen as follows:

Small Lots	50%
Medium Lots	40%
Large Lots	35%

Maximum building coverage may be increased in proportion to the amount of required parking which would be enclosed in a structure or structures up to a maximum building coverage of 50% where all of the required parking is enclosed in a structure or structures.
(Planning Board Resolution No. 1203, Condition No. 45a).

- (2) Floor area ratio (FAR) shall not exceed a ratio of 0.5:1 with increases in gross floor area permitted proportional to the amount of required parking provided within a structure or structure(s) up to a maximum FAR of 2:1 where all required parking is enclosed in a

structure. (Planning Board Resolution No. 1203, Conditions No. 44 and 46b)

(3) Maximum building footprint on lot reduced by minimum landscape coverage requirements for certain locations as follows:

Small Lots	35%
Medium Lots	30%
Large Lots	25%

(Planning Board Resolution No. 1203, Condition No. 45a).

(4) Maximum building footprint on lot reduced by same requirements for certain locations set by Planning Board Resolution No. 1203, Condition No. 44 and amended by Planning Board Resolution No. 1533.

LANDS FOR PUBLIC USE: Public Streets and portion of Shoreline Park.

Proposed Approvals for Currently Undeveloped Property

I. Village 5 (631 Units in Tract 5905)

APPROVALS: (1) Planned Development PDA-89-1.
(2) Vesting Tentative Map for Tract 5905.

PERMITTED USES: Residential uses and designated common areas.

INTENSITY: (1) 631 units in 120.6 gross acres.
(2) Intensity: Net Acreage Per Neighborhood

<u>Neigh- berhood</u>	<u>Net Acres</u>	<u>No. of Homes</u>	<u>Homes Per Acre</u>
"A"	18.2	88	4.8
"B"	34.5	208	6.0
"C"	19.6	207	10.6
"D"	18.7	<u>128</u>	<u>6.8</u>
TOTALS	52.70	631	
AVERAGE			6.9

MAXIMUM HEIGHT
OF BUILDINGS: 2 stories.

SIZE OF BUILDINGS: (1) Sizes shown in PD Application prepared by Corbin, Yamafugi & Partners.

(2) Average lot coverage in each Neighborhood shall not exceed 48%. A maximum building coverage of 55% shall be permitted on individual lots.

LANDS FOR PUBLIC USE: Public streets, fire station and portion of Shoreline Park.

II. Ferry Terminal

APPROVALS: (1) Negative Declaration for ferry terminal and operations project covered as a portion of IS-89-1.

(2) Rezoning R-89-1 for 1.7 acres for portion of ferry terminal parking area.

(3) Ferry terminal portion of Planned Development PDA-89-1.

(4) Ferry terminal portion of Vesting Tentative Map for Tract 5905.

PERMITTED USES: Ferry terminal parking and use of shelter structure; operation of ferry service.

DENSITY-INTENSITY: (1) One ferry terminal shelter building.

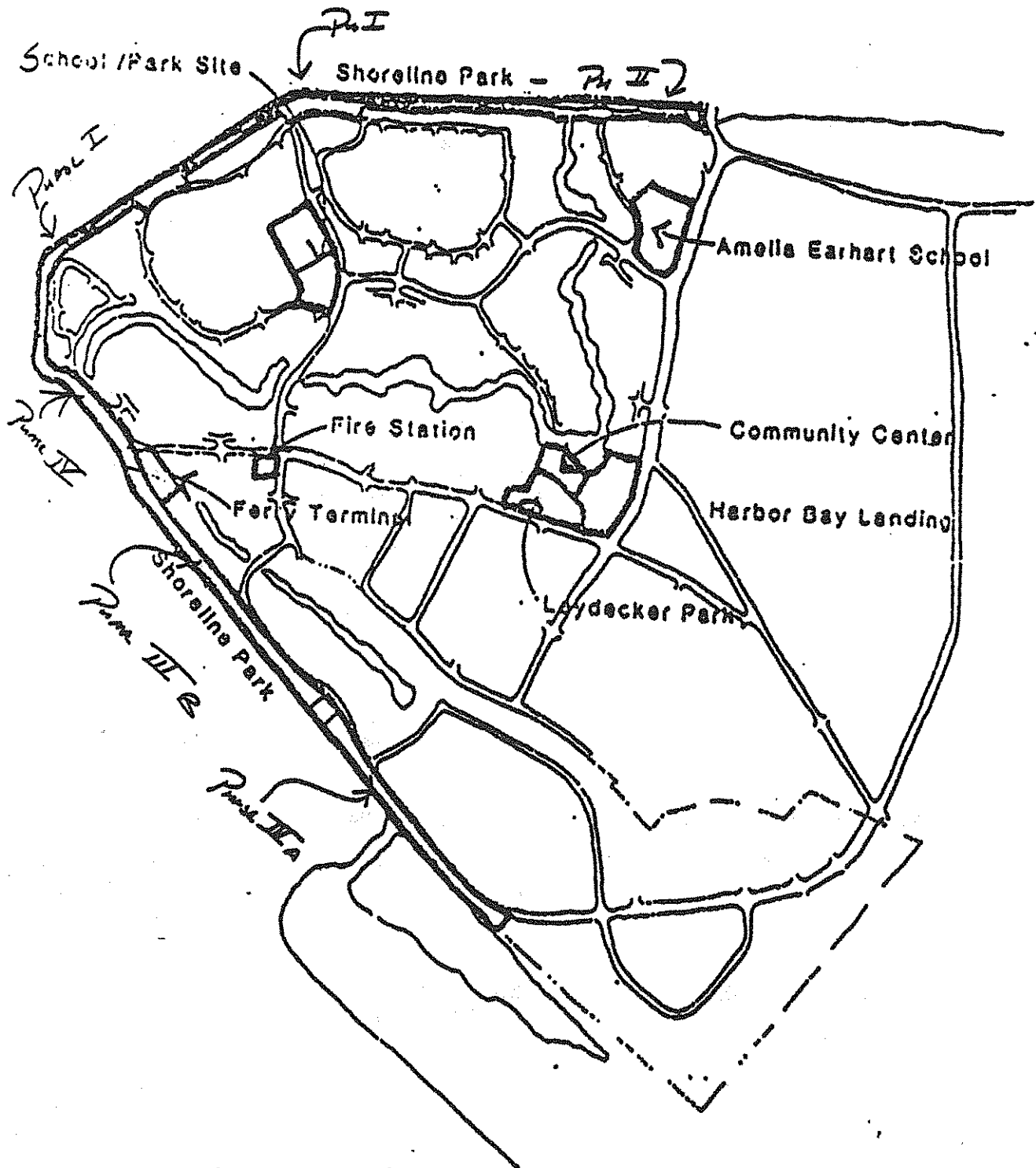
(2) Parking in rezoned portion and in Business Park portion of parking area for up to 250 cars.

MAXIMUM HEIGHT
& SIZE OF BUILDING: 1 story shelter building generally as proposed by Doric Development.

LANDS FOR PUBLIC USE: Short-term public parking spaces for Shoreline Park within ferry terminal parking area.

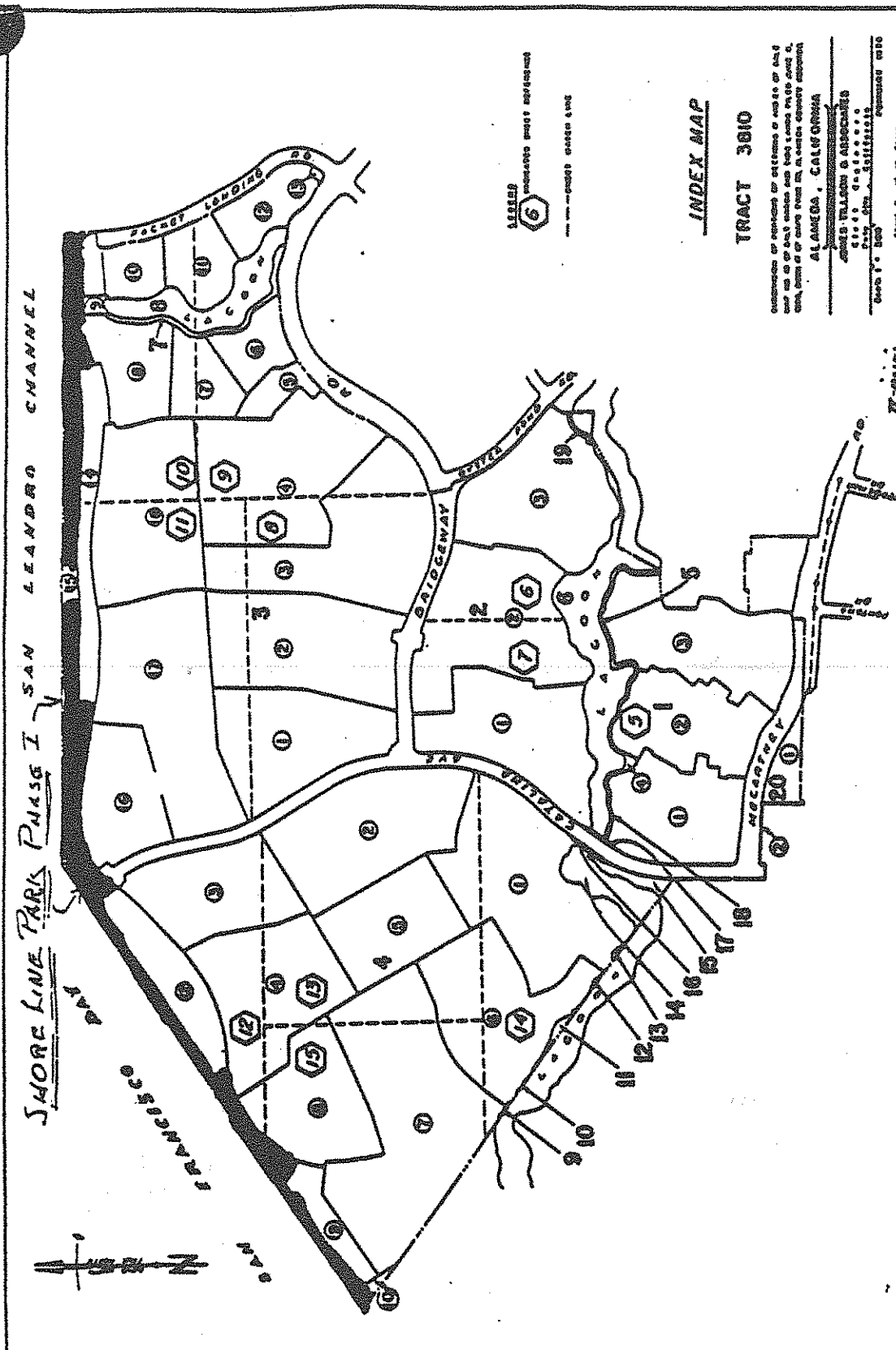
EXHIBIT E

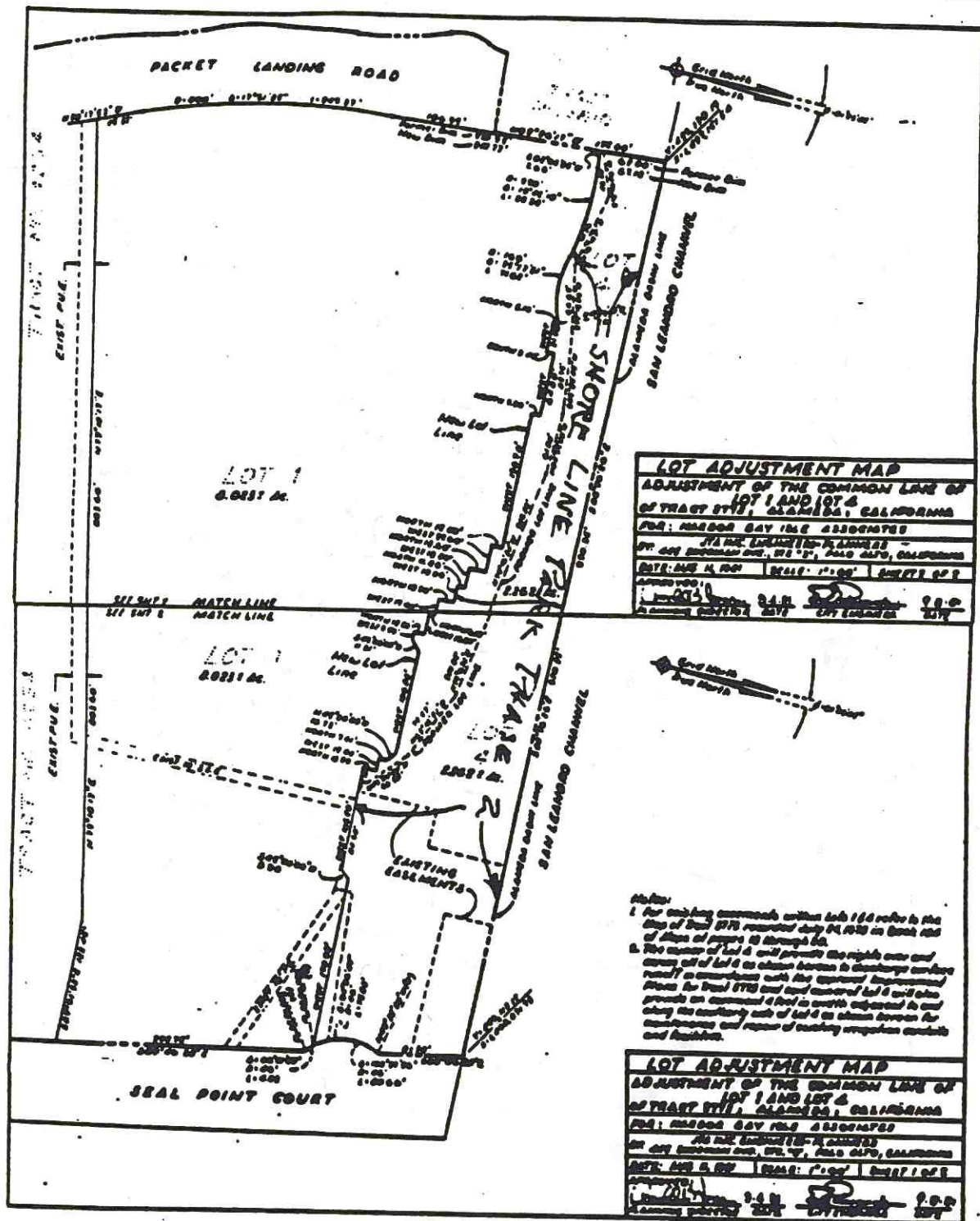
DESCRIPTION OF AREAS TO BE DEDICATED FOR SHORELINE PARK

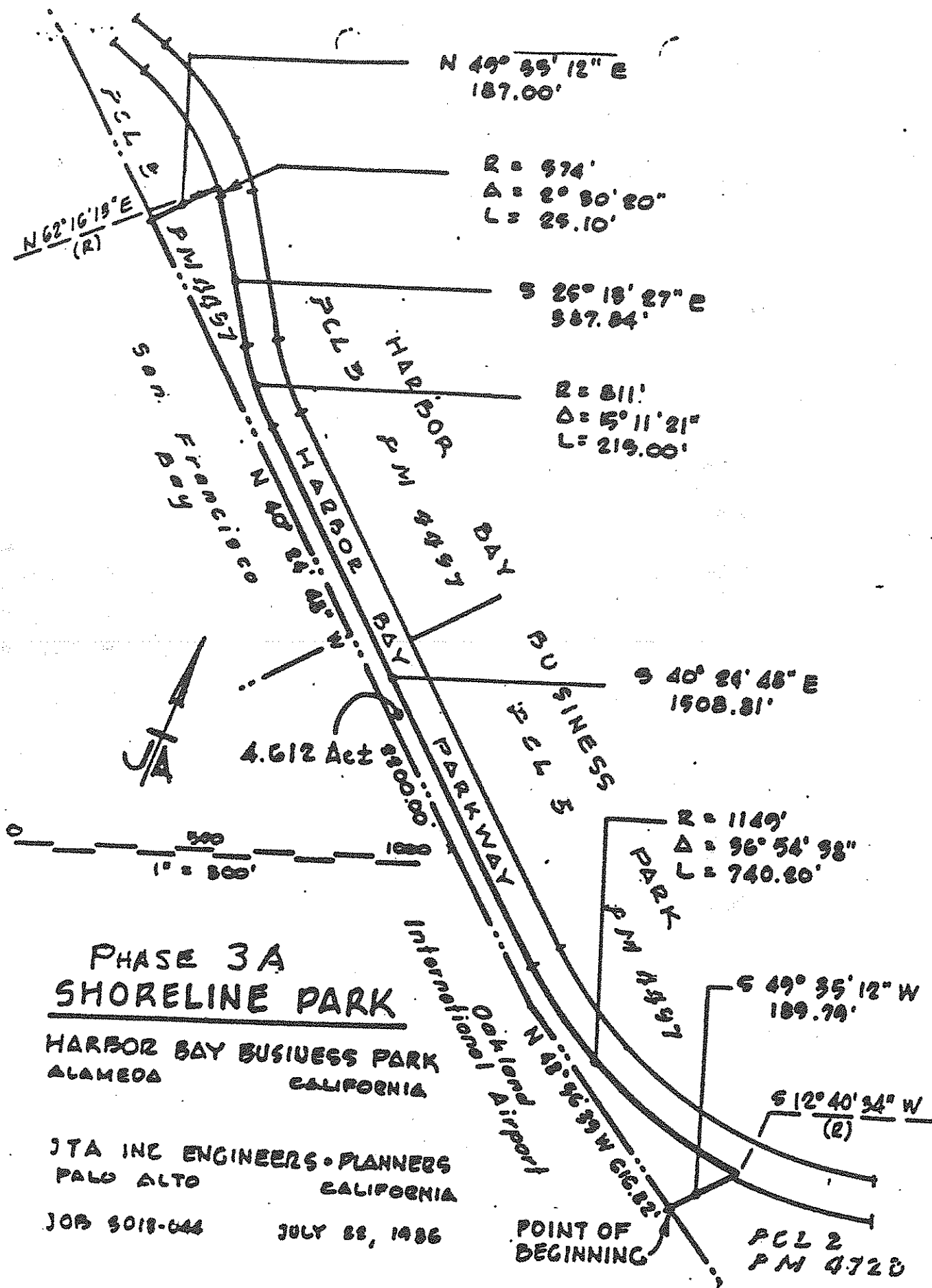


SHORELINE PARK

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BAY EDGE
PROMENADE

TRANSITION
AREA

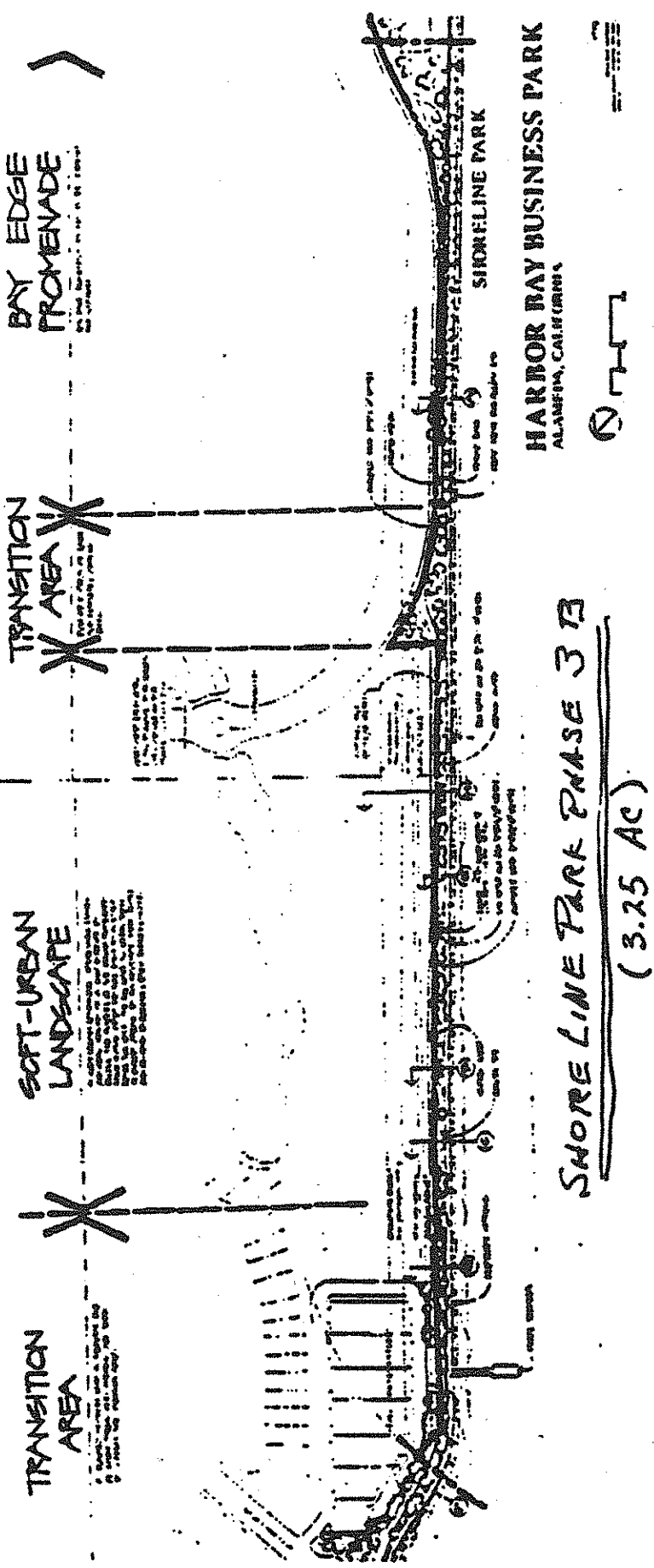
SOFT-URBAN
LANDSCAPE

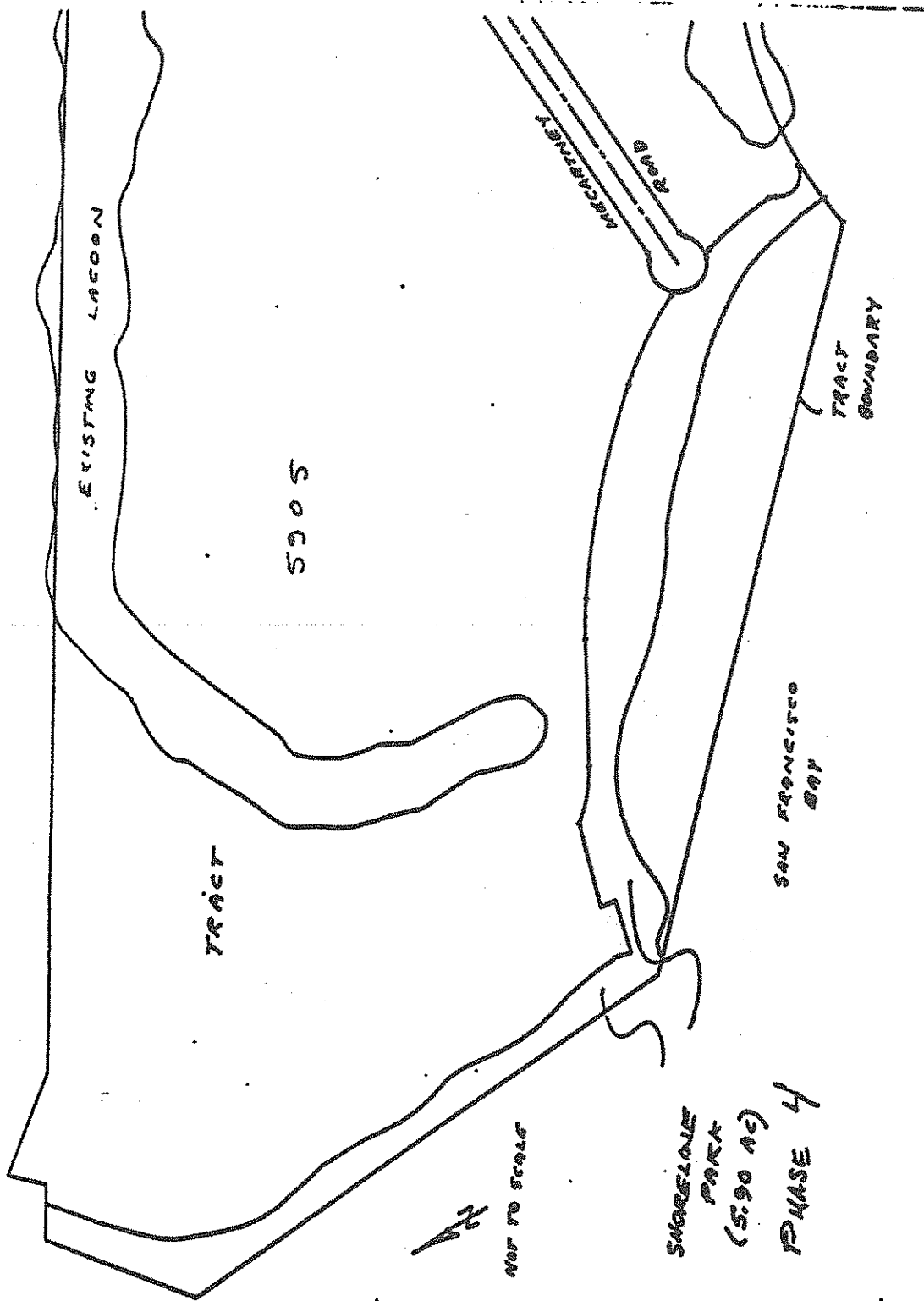
TRANSITION
AREA

SHORELINE PARK

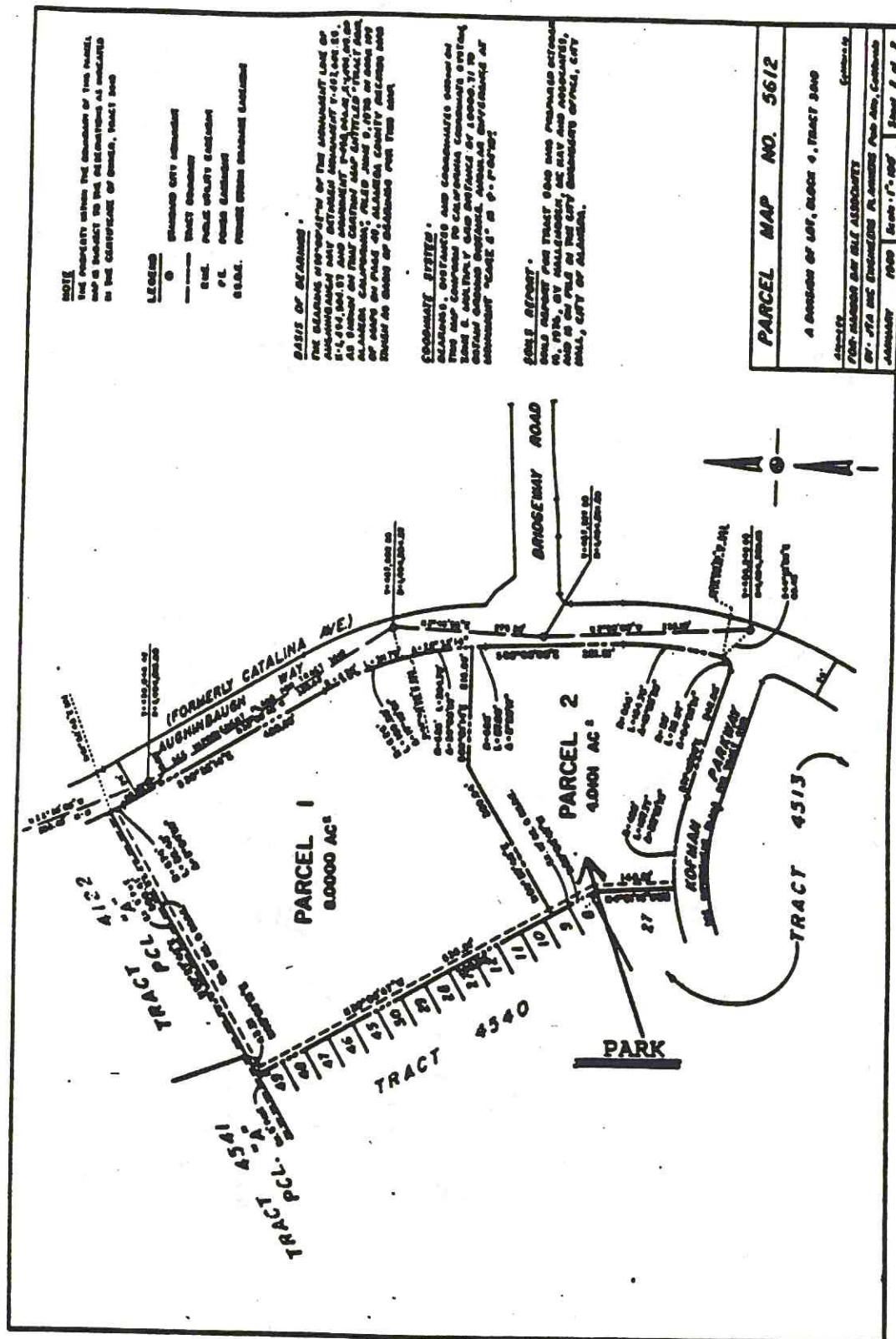
HARBOR RAY BUSINESS PARK
ALAMITOS, CALIFORNIA

SHORELINE PARK PHASE 3B
(3.25 AC)





DESCRIPTION OF INTERIOR PARK LAND



INTERIOR SCHOOL SITE

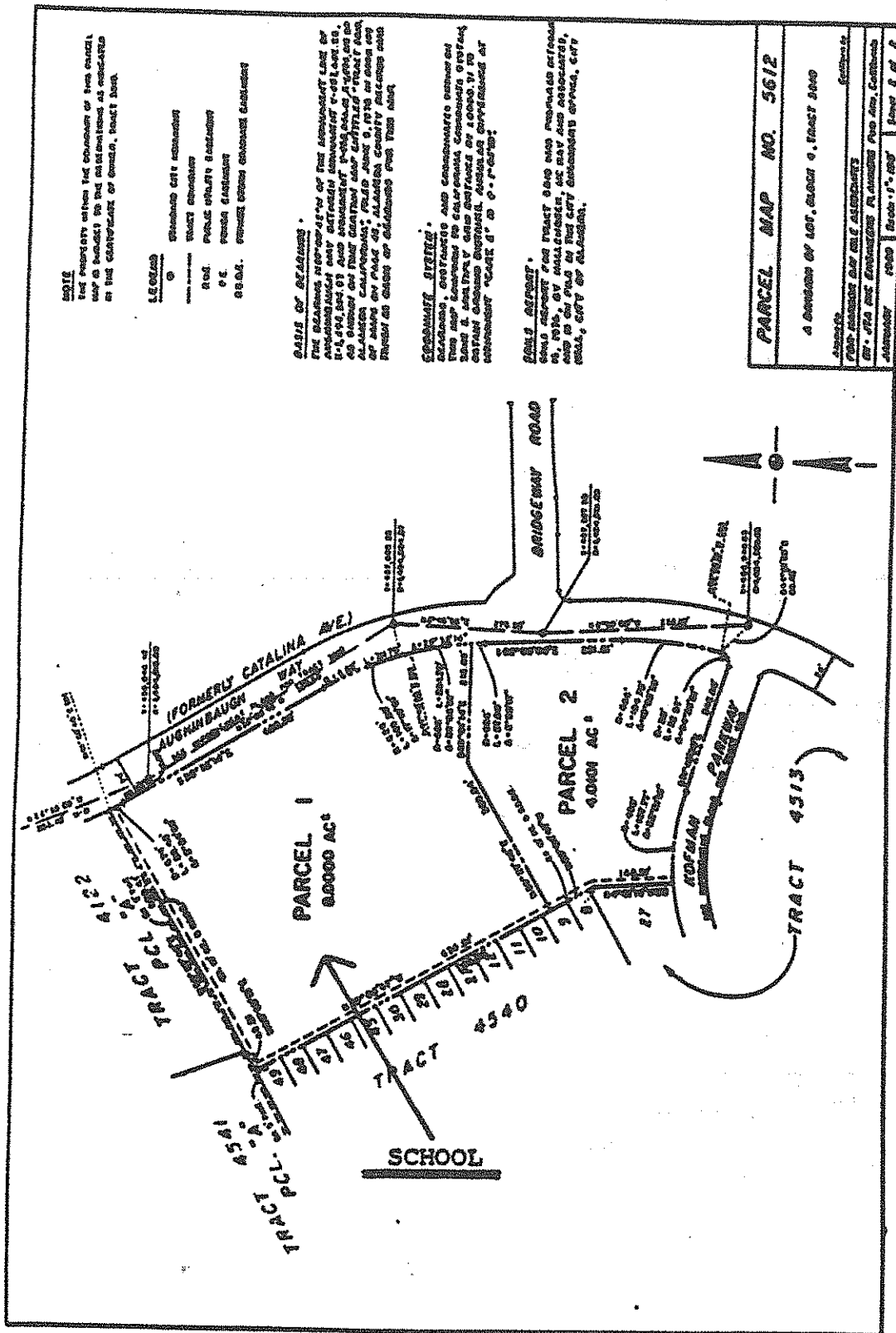


EXHIBIT H
GRANT DEED FOR SCHOOL

42

RECORDING REQUESTED BY

ORDER

APR

RECORDED MAIL TO

APR
1981
10:00 AM
City &
Title

School Site

DRAFT

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Grant Deed

The undersigned grantor(s) declare(s):

Documentary transfer tax to \$

- : computed on full value of property conveyed, or
- : computed on full value less value of liens and encumbrances remaining at time of sale.
- : Unincorporated area: () City of
- : Realty not sold.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

HARBOR BAY ISLE ASSOCIATES, a California General Partnership

hereby GRANT(S) to

THE CITY OF ALAMEDA, CALIFORNIA, a Municipal Corporation

that property in the City of Alameda, Alameda County, State of California, described as:

See Exhibit "A" attached hereto and incorporated by reference herein.

This grant is made upon the conditions subsequent set forth in Exhibit "B" attached hereto and incorporated by reference herein.

This conveyance is made subject to those conditions, covenants and restrictions contained in that certain Declaration of Conditions, Covenants and Restrictions executed by Harbor Bay Isle Associates, dated and recorded on in Book at Page of the official records of Alameda County, California.

Mail tax statements to

Date

STATE OF CALIFORNIA

COUNTY OF

On before me, the undersigned,
a Notary Public in and for said State, personally appeared,

Harbor Bay Isle Associates

By:

Stephen K. Brinhall
Executive Vice-President
Doric Development, Inc.
General Partner

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name subscribed to the within instrument and acknowledged that executed the same. Witness my hand and official seal.

Signature

Name (Typed or Printed)

EXHIBIT B

Right of Termination Upon Condition Subsequent

This grant is made upon the condition that the real property described herein be developed and used within ten (10) years of the date of recording of this grant solely as a permanent site for a public school. Within such ten year period, if the real property described herein, or any portion thereof, is used other than as a permanent site for a public school, or if at the end of such ten (10) year period the site has not been so developed and used, or such development and use has been abandoned, then Harbor Bay Village Five Associates, or its successors and assigns, within one hundred eighty (180) days after actual notice of such lack of use or nonconforming use, or within one hundred eighty (180) days after the expiration of such ten year period, whichever earlier occurs, shall have the right, but not the obligation, upon written notice to the City of Alameda and the Alameda Unified School District, to re-enter and repossess the real property and terminate all right, title and interest in the property granted by this deed without paying any compensation for any buildings or other improvements or betterments that may then be upon the real property, and without making any compensation or incurring any liability for damage or losses of any kind. Harbor Bay Isle Associates, or its successors and assigns, shall thereupon have and enjoy all property granted by this deed as if this conveyance had not been made. The City of Alameda and its successors and assigns shall thereupon immediately surrender possession of the real property, and shall forfeit all rights thereto as required herein.

EXHIBIT I
DESCRIPTION OF HARBOR BAY LAGOON SYSTEM



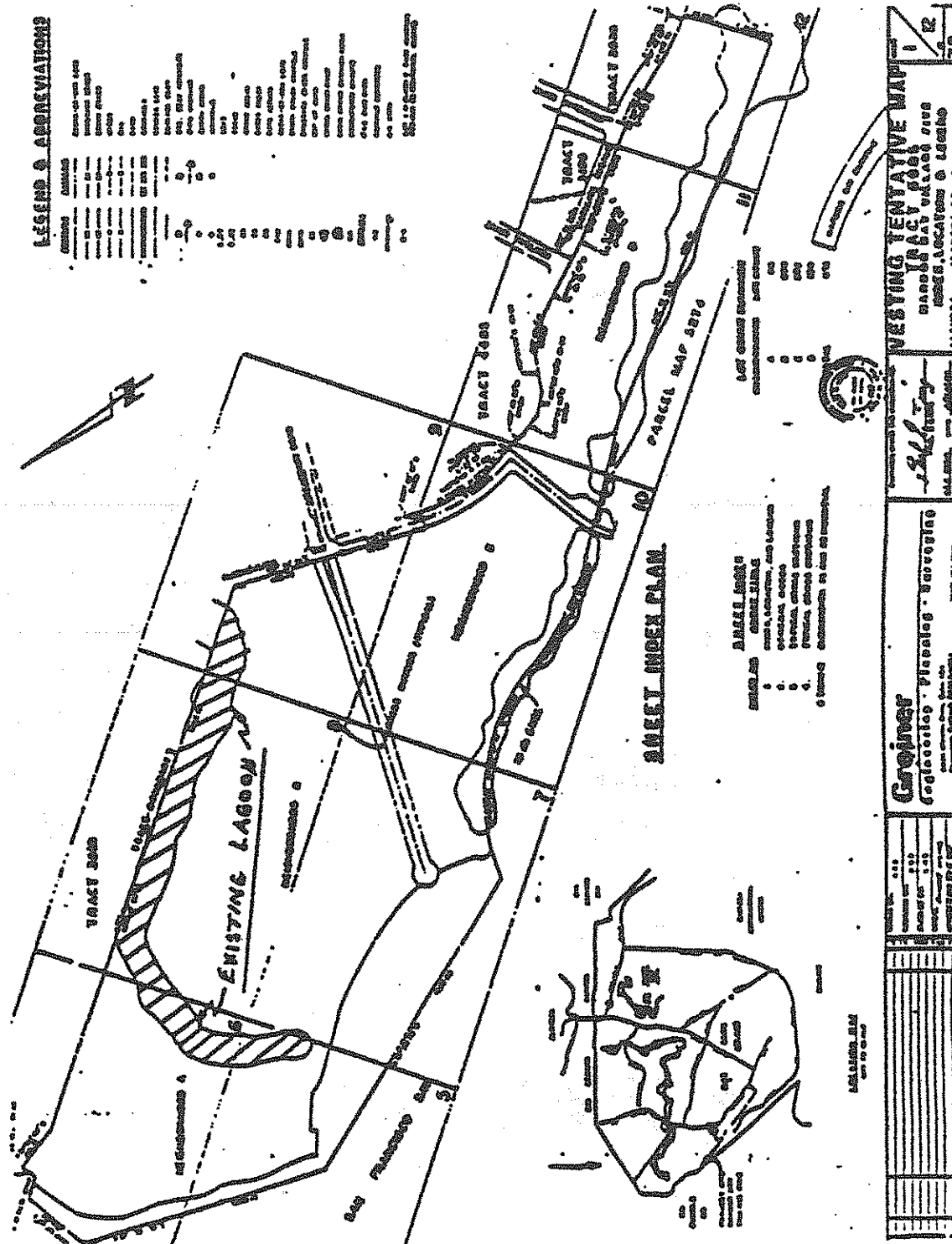
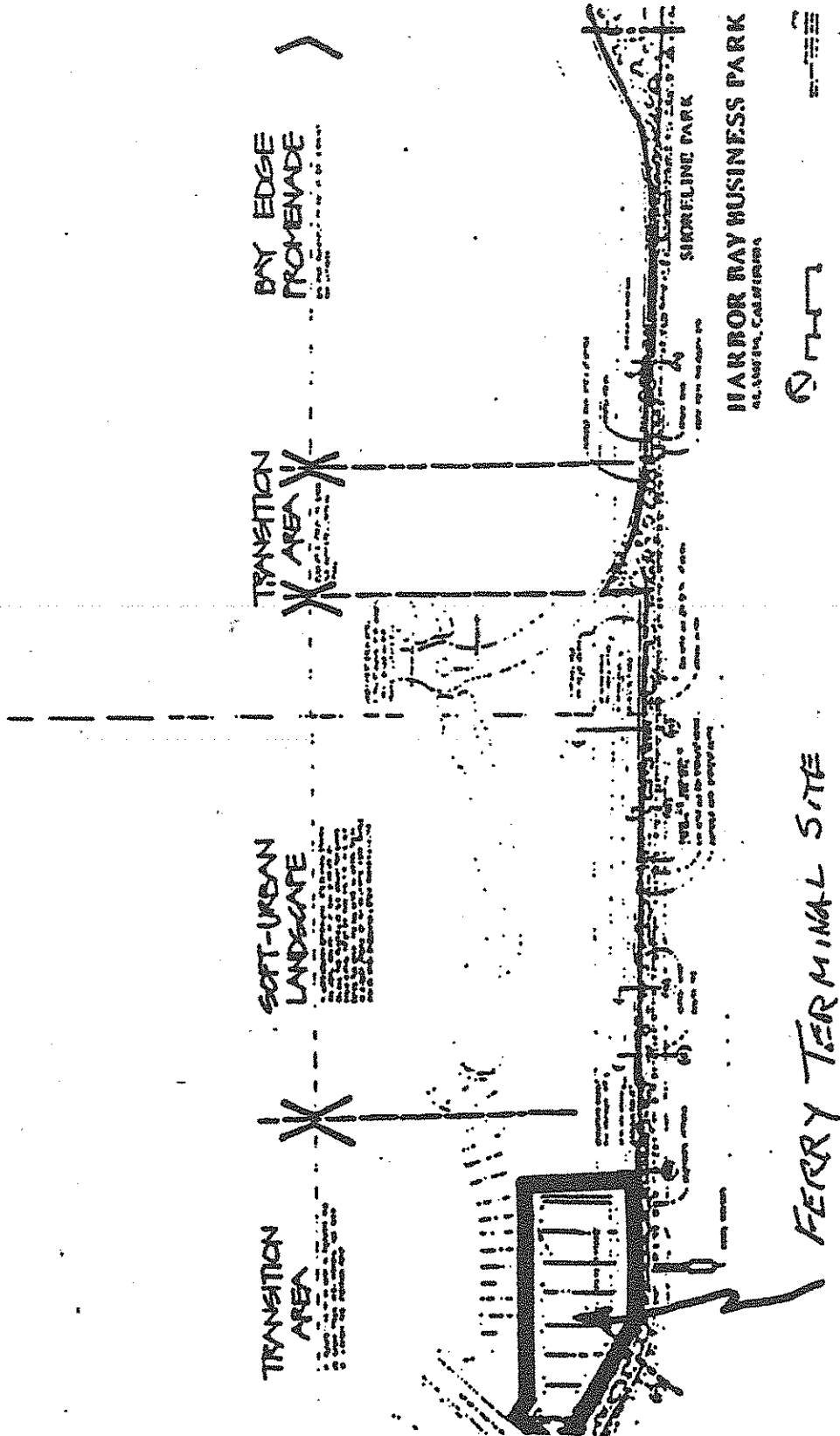
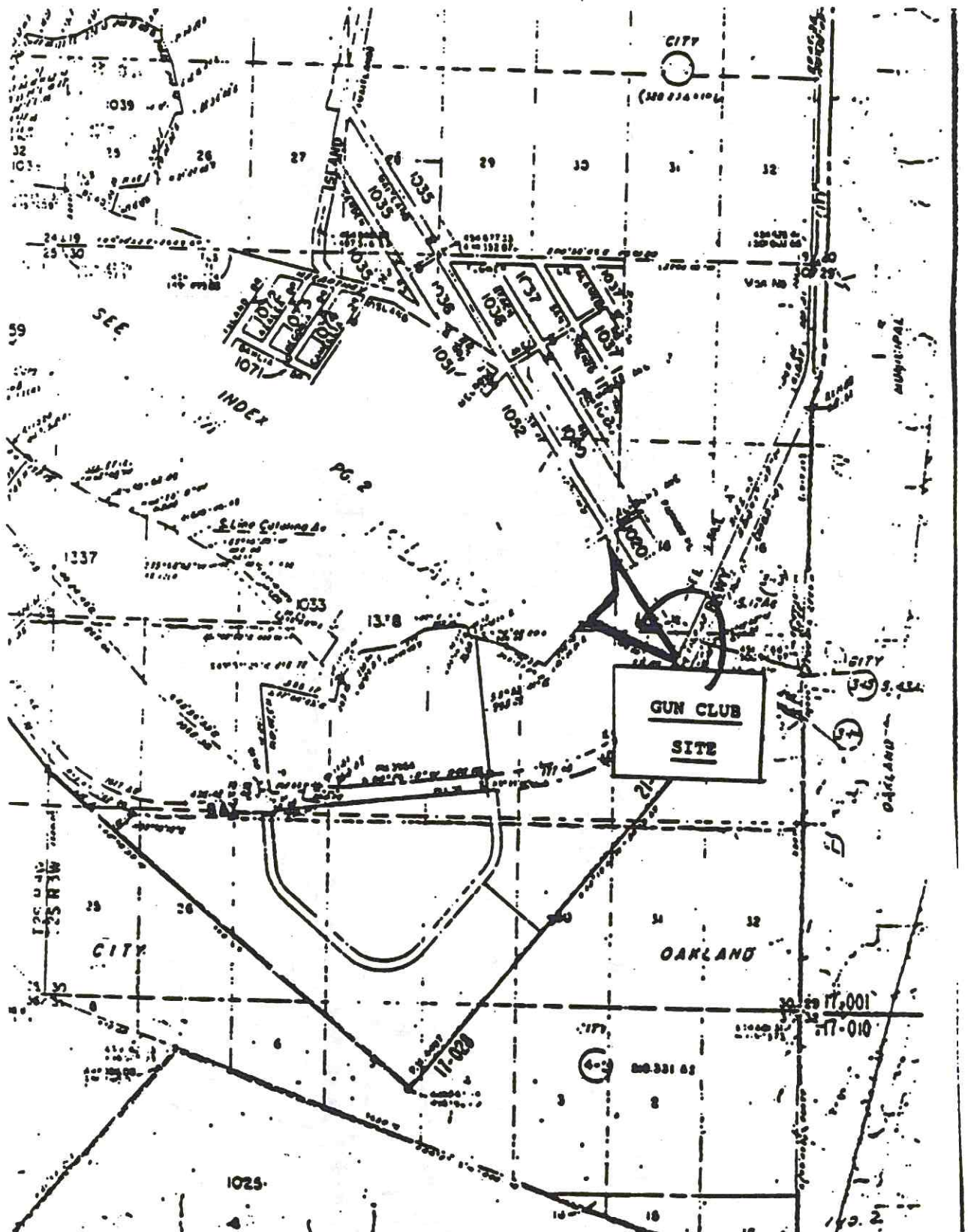


EXHIBIT J

MARITIME DOCKING FACILITY



GUN CLUB SITE



GROUND LEASE AGREEMENT

between

CITY OF ALAMEDA, as Lessor

and

HARBOR BAY ISLE ASSOCIATES, as Lessee

Dated April 5, 1989

Exhibit L

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GROUND LEASE AGREEMENT

THIS GROUND LEASE between the CITY OF ALAMEDA, a municipal corporation, hereafter "Lessor," and HARBOR BAY ISLE ASSOCIATES, a general partnership, hereafter "Lessee," is made effective as provided herein

1. PREMISES. Lessor leases to Lessee, and Lessee hires from Lessor, the premises hereafter described.

(a) Except as expressly provided to the contrary in this Lease, reference to "Premises" is to the described land plus any described appurtenances, exclusive of any improvements hereafter located on the Premises, notwithstanding that any such improvements may or shall be construed as affixed to and as constituting part of the real property, and without regard to whether ownership of the improvements is in Lessor or in Lessee.

(b) The legal description of the Premises, exclusive of improvements in place, is included in Exhibit "A" attached to this Lease and initialed by the parties. Any improvements existing on the Premises at the commencement date of this Lease shall remain Lessor's property, but Lessee may use, sell, demolish, remove or otherwise dispose of them when the new construction provided for below is commenced. Lessor shall receive no compensation for the improvements, other than the performance of Lessee's covenants expressed in this Lease.

2. TERM.

(a) Initial Term. The term of this Lease is 25 full calendar years beginning April 5, 1989, and ending at midnight on April 4, 2014, unless extended or sooner terminated as provided for in this Lease.

(b) Option to Extend. Lessee may, at Lessee's option, extend the original term of this Lease for one additional period of 25 years, subject to all the provisions of this Lease, including, but not limited to, provisions for adjustments to and variations in rent. At least 60 days before the last day of the term, Lessee shall give Lessor notice irrevocably exercising the option.

3. RENT AND OTHER PAYMENTS. Lessee shall pay

without abatement, deduction or offset the following sums:

(a) Rent.

(i) Initial minimum rent. The sum of \$5,000.00 to Lessor as minimum annual net rent, payable in advance in annual installments beginning on the date of commencement of the Lease, and thereafter on the first day of each succeeding year of the term of the Lease. The minimum annual net rent is subject to adjustment as follows.

(ii) Adjustments to minimum rent.

A. Percentage of net income. Any amount to Lessor by which 50% of net income, as defined below, exceeds the minimum annual net rent specified above for the applicable period.

B. Computation; payment. On or before the 60th day following the close of each lease year (defined below), Lessee shall, without notice or demand from Lessor, deliver to Lessor, in the manner prescribed for giving notice, a statement showing the net income on or from the Premises and improvements for that lease year, and shall simultaneously pay the excess of percentage rent over the minimum net rent specified above. Payment shall be made in such currency of the United States as at the time of payment shall be legal tender for the payment of private debts, or by check or other order as is then customary in business transactions; provided that Lessor's receipt and use of any form of payment other than currency shall not constitute satisfaction of the obligation represented by the tender until the amount is actually paid or credited in full.

C. Definition of lease year. The lease year is either a calendar year or a fiscal year, as selected by Lessee by notice either before or during the first 12 full calendar months following commencement of the term. If Lessee makes no such selection, a lease year shall be considered to begin on the first day of the first full calendar month following commencement of the term and on each subsequent anniversary date of the beginning of the first lease year. Partial years preceding the first lease year and following the last full lease year of the term are respectively included in the percentage computation specified above in the proportion that their respective number of days bears to a full year; provided that if the term is extended

beyond the original term or any extension thereof, the partial lease year ending on the terminal date of such term or extension period shall, for the purpose of computing percentage rent only, be considered as part of the full lease year extending into the extension period.

Percentage rent for one lease year is not subject to adjustment by reason of net income for any other lease year. If an item is included in gross income for one lease year and treated as an exclusion (defined below) in another lease year, the percentage rent for the lease year in which the item was included shall not be affected by reason of the exclusion in another lease year.

D. Net income. Net income consists of the gross income from all activities conducted on the Premises, less all costs of such activities, including, but not limited to, costs of operation, repair, maintenance, security, insurance, taxes, utilities, interest on financing incurred for purposes of acquiring the leasehold interest of Lessee's predecessor, the Island City Gun Club, and for improving the Premises, and the costs of acquiring the leasehold interest of Lessee's predecessor and of improving the Premises amortized over the 25-year initial term of the Lease.

E. Exclusions from income. Excluded from income for purposes of calculating net income, or subtracted if previously included, shall be: (1) All uncollected credit and installment balances determined and shown on Lessee's books to be uncollectible; (2) all sums collected and paid out for sales taxes, luxury taxes, excise taxes, and similar taxes required by law to be added to the total price, whether now or hereafter enforced, to be collected from customers and paid by Lessee; (3) all credits and cash refunds made on any transaction in relation to operation of the Premises; (4) bulk sales made by Lessee not in the ordinary course of business; (5) tax equivalents paid pursuant to paragraph 3(b); and (6) that portion of Lessee's receipts of all coin-operated devices that Lessee must, by contract concerning them, turn over to a person, firm or corporation in which Lessee has no direct or indirect financial interest.

F. Records and audit. Lessee shall keep true and correct records and shall require its sublessees, concessionaires, and licensees to keep true and correct records of all income and expenses. All records shall be kept at Lessee's address, as

provided in paragraph 11(a) of this Lease, for no less than two years after delivery of the required annual reports; provided that each party may at reasonable times remove any or all records or permit or cause them to be removed for legal or accounting purposes or for other purposes promotive of and consistent with these provisions and this Lease. Lessor shall have the right, at any reasonable time and from time to time after giving reasonable notice, to do any or all of the following: (1) To audit the records; (2) to cause an audit of the records to be made; (3) to make abstracts of the records; (4) to make copies of any or all of the records; (5) to examine any or all subleases, licenses and concession agreements; and (6) to make copies of any or all subleases, licenses, and concession agreements. Lessee shall make all records specified in the notice available at the time specified in the notice, if reasonable, and at the place where the records are to be kept; provided that Lessor may remove any or all records to a place or places reasonable for the purpose. All information so obtained by Lessor or otherwise obtained under the percentage rent provisions of this Lease shall be treated as confidential, except in any litigation or arbitration proceeding between the parties. If the audit discloses that the net income was understated by more than 10%, Lessee shall immediately pay the additional percentage rent to Lessor plus the reasonable cost of the audit; otherwise, Lessor shall bear the cost.

G. Negation of partnership.

Nothing in this Lease shall be construed to render the Lessor in any way for any purpose a partner, joint venturer or associate in any relationship with Lessee other than that of landlord and tenant, nor shall this Lease be construed to authorize either to act as agent for the other, except as expressly provided to the contrary in this Lease.

H. Cost of living adjustments.

The minimum annual net rent shall be adjusted upward or downward as of the first day of each lease year (the "adjustment date") beginning with the second lease year, according to the following computation: The base for computing the adjustment is the Index figure for the month of February, 1989 (the "Index date"), as shown in the Consumer Price Index (the "Index") for All Urban Consumers for the San Francisco-Oakland Metropolitan Statistical Area based on the years 1982-1984 = 100, as published by the U.S. Department of Labor's Bureau of Labor Statistics. The base figure for the Index date is 124.00.

The Index for the adjustment date shall be computed as a percentage of the base figure. For example, assuming the base figure on the Index date is 110 and the Index figure on the adjustment date is 121, the percentage to be applied is $121/110 = 1.10 = 110\%$. That percentage shall be applied to the initial minimum annual net rent. In no case shall the minimum monthly rent be less than the initial minimum monthly rent. The Index for the adjustment date shall be the one reported in the U.S. Department of Labor's newest comprehensive official index then in use and most nearly answering the foregoing description of the Index to be used. If it is calculated from a base different from the base year 1982-84 = 100 used for the base figure above, the base figure used for calculating the adjustment percentage shall be first converted under a formula supplied by the Bureau. If the described Index shall no longer be published, another generally recognized as authoritative shall be substituted by agreement of the parties. If they are unable to agree within 60 days after demand by either party, the substitute index shall, on application of either party, be selected by the chief officer of the San Francisco Regional Office of the Bureau of Labor Statistics or its successor.

(b) Taxes; Assessments.

(i) On real and personal property. An amount or amounts equal to all real and personal property taxes, general and special assessments, and other charges of every description that would be levied on or assessed against the Premises, improvements located on the Premises, personal property located on or in the land or improvements, the leasehold estate, or any subleasehold estate which would be applicable if Lessee were the owner of the Premises, to the full extent that installments of such taxes, assessments or charges would normally fall due during the term. Lessee shall make all such payments directly to the authority which would normally make such charges as if Lessee were, in fact, the owner of the Premises; such payments shall be made before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, the law expressly permits the payments of any or all of the above items in installments (whether or not interest accrues on the unpaid balance), Lessee may, at Lessee's election, utilize the permitted installment method, but shall pay each installment with any interest before delinquency.

(ii) Prorations.

A. First and last year. All payments of taxes or assessments, or both, except permitted installment payments, shall be prorated for the initial lease year and for the year in which the lease terminates. For permitted installment payments of which at least the first installment fell due before commencement of the term, Lessee shall pay all installments falling due after commencement of the term. For permitted installment payments for which the first installment falls due after the final year of the term, Lessee shall pay only the installment falling due before expiration of the term.

B. Assessed with other property. If the Premises are assessed with other property of Lessor or Lessee for purposes of property taxes, assessments or other ad valorem or improvement levies (collectively referred to in this paragraph as "taxes"), all taxes imposed on the entire parcel of which the Premises are a part shall, until the Premises are separately assessed, be prorated and Lessee shall pay that fraction of the entire tax computed in proportion - to the total area involved.

(iii) Lessee's right to contest. Lessee may contest the legal validity or amount of any taxes, assessments or charges for which Lessee is responsible under this Lease, and may institute such proceedings as Lessee considers necessary. If Lessee contests any such tax, assessment or charge, Lessee may withhold or defer payment or pay under protest.

4. USES; PURPOSES.

(a) Recreational Vehicle Parking; Boat Storage; Mini-Warehouse Units. Lessee shall use and permit the use of the Premises primarily for the construction, maintenance, and operation of a facility or facilities for recreational vehicle parking, boat storage, and mini-warehouse units. Improvement, landscaping, and the allocation of space on the Premises between recreational vehicle parking, boat storage, and mini-warehouse units shall be by mutual agreement between Lessor and Lessee as established and/or modified in writing from time to time at and after the commencement of this Lease, pursuant to the provisions of applicable law; provided, however, that the Premises may be developed and improved in phases based upon Lessee's reasonable projections of market demand, and

that space allocation among the described uses shall be based primarily upon market demand. Initially, the facilities shall be open to the general public. At such time as demand for space for any of the uses of the facilities exceeds capacity for such facility, residents of the Harbor Bay Isle community shall have priority. Residents of Alameda outside the Harbor Bay Isle community shall be entitled to space within each of the facilities on a "first in - last out" basis.

(b) Approvals. As a condition precedent to Lessee's obligations hereunder, Lessor shall satisfy all requirements of federal, state or local laws and grant or issue all approvals or permits required for the use and purposes and construction herein described. If approvals are required from entities other than Lessor, Lessor shall, at Lessee's notice of request, join with Lessee in applications and proceedings to obtain necessary use approvals, but without cost or expense to Lessor.

5. IMPROVEMENTS.

(a) Construction of New Improvements. Within one year after the later of Lessor's approval of a vesting tentative subdivision map for Village V of Harbor Bay Isle, with conditions satisfactory to the subdividor(s) thereof, which approval shall be a condition precedent to Lessee's obligations hereunder, and receipt by Lessee of all approvals and permits for development of the Premises and construction of improvements for the purposes of this Lease, Lessee shall construct or otherwise make new improvements on any part or all of the Premises and may, but is not obligated to, demolish, remove, replace, alter, relocate, reconstruct or add to any existing improvements in whole or in part, and to modify or change the contour or grade or both of the land. All salvage shall belong to Lessee. Design and location of improvement and landscaping shall be made by mutual agreement between Lessor and Lessee in writing, pursuant to the provisions of applicable law.

(b) Lessee's Right to Grant Easements. Lessor grants to Lessee the right to grant to public entities or public service corporations, for the purposes of serving only the Premises, rights-of-way or easements on or over the Premises for poles or conduits or both for telephone, electricity, water, sanitary or storm sewers or both, and for other utilities and municipal or special district services.

(c) Protection of Lessor Against Claims. Lessee shall pay or cause to be paid the total costs and expenses of all works of improvement, as that phrase is

defined in the Mechanics' Lien Law in effect at the place of construction when the work begins. No such payment shall be construed as rent. Lessee shall not suffer or permit to be enforced against the Premises or any part of it any mechanic's, materialman's, contractor's or subcontractor's lien arising from any work of improvement, however it may arise. However, Lessee may, in good faith and at Lessee's own expense, contest the validity of any such asserted lien, claim or demand.

(d) Lessee Required to Maintain Premises.

Throughout the term, Lessee shall, at Lessee's sole cost and expense, maintain the Premises and all improvements in good condition and repair, ordinary wear and tear excepted. Nothing in this paragraph shall be construed as limiting any right given elsewhere in this Lease to alter, modify, demolish, remove or replace any improvement, or as limiting provisions relating to condemnation or to damage or destruction during the final year or years of the term.

(e) Right to Contest Order. Lessee has the right to contest by appropriate judicial or administrative proceedings, without cost or expense to Lessor, the validity or application of any law, ordinance, order, rule, regulation or requirement that Lessee repair, maintain, alter or replace the improvements in whole or in part, and Lessee shall not be in default for failing to do such work until a reasonable time following final determination of Lessee's contest. Lessor may, but is not required to, contest any law independently of Lessee. Lessor may, and on Lessee's notice request shall, join in Lessee's contest.

(f) Further Approval Not Required. Except for the ordinary exercise of its police powers, Lessor's further approval is not required for Lessee's repairs, alterations or additions within the scope of mutually agreed upon improvements, landscaping, and allocation of space between uses.

(g) Damage or Destruction During Final Years of Term. Lessee is relieved of the obligation to, but may, repair, restore or reconstruct improvements damaged or destroyed during the final five years of the term if the cost of repair, restoration or reconstruction would exceed \$100,000 and the damage or destruction is uninsured and is not required to be insured under any provision of this Lease and Lessee gives Lessor notice of the damage or destruction within 90 days after the event, describing the facts that qualify the casualty

under this provision. Lessor may, by notice given at any time after Lessee's notice of the damage or destruction, elect to terminate the Lease at a date stated in Lessor's notice and to forgive all rent and other obligations of Lessee for the period following that date. Thereafter, Lessee shall deliver possession of the Premises to Lessor and quitclaim all right, title and interest in the land and improvements to Lessor and relinquishes all remaining options to extend or renew the Lease, provided that the giving of notice of damage or destruction if a condition of release from the obligation to repair, restore or reconstruct shall be conclusively construed as such a relinquishment. Lessee shall relinquish and transfer to Lessor all insurance proceeds resulting from the casualty to the extent such proceeds exceed insured losses sustained by Lessee.

(h) Ownership of Existing Improvements.

Title to improvements on the Premises at the commencement date of this Lease is retained by Lessor unless otherwise provided in the paragraph describing the Premises. The parties covenant for themselves and all persons claiming under them that such existing improvements are real property.

(i) Ownership of New Improvements.

All improvements constructed on the Premises by Lessee as permitted by this Lease shall be owned by Lessee until expiration of the term or sooner termination of this Lease. Lessee shall not, however, remove any improvements from the Premises nor waste, destroy or modify any improvements on the Premises, except as permitted by this Lease. The parties covenant for themselves and all persons claiming under them that the improvements are real property.

(j) Ownership of Improvements at Termination.

All improvements on the Premises at the expiration of the term or sooner termination of this Lease shall, without compensation to Lessee, then become Lessor's property free and clear of all claims to or against them by Lessee or any third person, and Lessee shall defend and indemnify Lessor against all liability and loss arising from such claims or from Lessor's exercise of the rights conferred by this paragraph. Lessee shall not be required to remove any fixtures or improvements from the Premises.

(k) Lessee's Right to Remove Fixtures.

At the expiration of the term or any extension thereof, Lessee shall have the right, but not the obligation, to remove any and all trade fixtures, whether or not

affixed to the Premises; provided, however, that Lessor may, at Lessor's election, purchase Lessee's trade fixtures located on the Premises on the date of the notice specified below. The price shall be Lessee's depreciated cost based on the estimated useful life of the fixtures as determined from Lessee's books and calculated on a straight-line basis. The election shall be exercised, if at all, by notice given not more than 150 days and not less than 90 days before the expiration of the term; provided that, in the event of termination other than by normal expiration of the term, the notice may be given concurrently with or as a part of the notice of termination. Lessor's failure to exercise the election to purchase Lessee's trade fixtures at expiration of the principal term shall not constitute a waiver of the election at termination during or at the expiration of the period of extension or renewal. The exercise of the election shall be ineffective if the term at the expiration at which the notice is given is extended.

6. FINANCING; ENCUMBRANCE; SUBORDINATION.

(a) Subordination of Lessor's Interest.

Lessor shall, promptly after notice of request from Lessee, execute and deliver a mortgage, deed of trust or other security instrument (herein "mortgage") sufficient to subordinate, to the lien of a first encumbrance represented by the mortgage, Lessor's fee title (which shall be considered to include fee title in the Premises or any part or parts of the Premises, including all rights and appurtenances), and the leasehold hereby created, together with all rents and other benefits due to Lessor under this Lease, and shall execute and deliver such construction loan agreements and other instruments as the lender or title company shall require to enable Lessee to obtain construction and take-out financing as authorized below. As used in this paragraph, construction financing means interim or short-term financing as limited by the conditions below; take-out financing means permanent or long-term financing; the proceeds of which, in whole or in part, are to repay and discharge the construction loan. Nothing in this provision shall be construed to require Lessee to divide the financing into construction and take-out loans instead of a single, long-term loan. Lessor shall execute all documents reasonably and customarily required by mortgagee or mortgagee's attorney(s) or by the title company insuring the mortgage, or by any combination of them. Lessor shall not be required to sign or execute the note to be secured by the mortgage on the fee title, but shall

execute the mortgage itself. The mortgage shall contain language to the effect that Lessor executes it solely for the purpose of encumbering Lessor's fee title and without assuming any personal liability whatsoever for the payment of the note it secures or any other provision of the note or mortgage.

(b) Mortgage of Leasehold.

(i) Lessee's right to mortgage leasehold. Lessee shall have the right at any time and from time to time to subject the leasehold estate and any or all improvements to one or more mortgages as security for a loan or loans or other obligation of Lessee relating to improvement or operations of the Premises, provided that:

A. The mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions and restrictions stated in this Lease and to all rights and interests of Lessor, except as otherwise provided in this Lease; and

B. Lessee shall give Lessor prior notice of any such mortgage and shall accompany the notice with a true copy of the note and mortgage.

(ii) Subordination of rent. If Lessee defaults under the terms of any permitted leasehold mortgage, and the mortgagee acquires Lessee's leasehold estate, whether by exercising its power of sale, by judicial foreclosure or by an assignment in lieu of foreclosure, or of exercise of power of sale, Lessor agrees to waive the rents falling due during the 12 months following the mortgagee's acquisition, conditioned on the following:

A. Payments of all taxes, assessments, and insurance premiums required by this Lease to be paid by Lessee are current or are brought current by mortgagee and are kept current by mortgagee;

B. Payments of all utility charges are current or are brought current and are kept current;

C. The mortgagee performs all Lessee's obligations for maintaining the Premises and improvements in good order and repair;

D. All income and rents from the operation of the Premises or improvements are held by mortgagee in trust for Lessor; and

E. Mortgagee shall cure any rent defaults of Lessee out of income and rent remaining after paying items A through C above and after mortgagee's reasonable expenses incurred in operating the Premises and improvements.

(iii) Form of note, mortgage. The note and mortgage shall conform substantially to the usual provisions in the mortgagee's loan documents for comparable projects unless specifically provided otherwise in this Lease. Mortgagee may take an assignment in lieu of foreclosure whether or not permitted by the note or mortgage.

(iv) Lessor's right to cure defaults. The mortgage documents shall contain provisions that all notices of default under the note and mortgage must be sent to Lessor and Lessee and that Lessor shall have the right to cure any default if Lessee fails to do so. Lessor shall have ten days in which to cure any default after the time for Lessee to cure it has expired. Neither Lessor's right to cure any default nor any exercise of such a right shall constitute an assumption of liability under the note or mortgage. If any default is non-curable, it shall not be grounds for foreclosure of the mortgage if Lessor, or Lessee in possession of the Premises, promptly performs all other provisions of the note and mortgage.

(v) Request for notice of default. On the recording of the mortgage, Lessee shall, at Lessee's expense, cause to be recorded in the office of the county recorder of the county where the Premises are located a written request executed and acknowledged by Lessor for a copy of all notices of default and all notices of sale under the mortgage as provided by California law. Inclusion in the body of the recorded mortgage itself of a request for notice having the effect described above shall constitute compliance with this provision.

(vi) Limit on mortgagee's liability. The leasehold mortgagee shall not be liable to perform Lessee's obligations under this Lease until the mortgagee acquires Lessee's rights by foreclosure. After acquiring Lessee's rights by foreclosure, the mortgagee shall be liable to perform Lessee's obligations only until the mortgagee assigns or transfers the leasehold as permitted by this Lease. The mortgagee shall not, however, be required to cure Lessee's defaults occurring before the mortgagee's

acquisition of Lessee's rights by foreclosure.

(vii) One mortgage, one debt. No permitted mortgage shall cover any interest in any real property other than interests specifically subjected to mortgage by this Lease. No mortgage permitted by this Lease shall cover more than one indebtedness.

(viii) New lease to mortgagee. On termination of this Lease by Lessor on Lessee's default, or on the mortgagee's acquisition of the leasehold by foreclosure, Lessor shall enter into a new lease with the mortgagee covering the Premises covered by the terminated or foreclosed lease if the mortgagee gives notice of request within 30 days after termination or foreclosure, pays all costs resulting from default and termination, and remedies all defaults construed as though the Lease had not been terminated. The new lease shall be for the remainder of the term of the terminated or foreclosed Lease, effective at the date of termination or foreclosure, at the rent and on the covenants, agreements, conditions, provisions, restrictions, and limitations contained in the terminated or foreclosed Lease.

(ix) Encumbrances on Lessor's title. On the commencement of the term, the Premises shall be free and clear of all mortgage liens other than those expressly agreed to in accordance with this Lease. Lessor shall not mortgage the fee title as long as Lessee is permitted under this Lease to maintain a leasehold mortgage that is also a lien on the fee title.

7. ASSIGNMENT; SUBLETTING

(a) Lessee's Right to Assign. Lessee shall have the absolute right to assign or otherwise transfer Lessee's interest in this Lease and the estate created by this Lease to a successor, defined as: (1) Any corporation that controls or is controlled by Lessee; (2) another corporation in connection with the corporate reorganization, or the merger of Lessee into, or the consolidation of Lessee with, another corporation or corporations; or (3) any successor of all or substantially all of Lessee's business or assets. Transfer to any partner, joint venturer, co-tenant or other member of Lessee shall not constitute a forbidden assignment under provisions of this Lease defining Lessee's right to assign.

(b) Conditions Precedent to Assignment. The following are conditions precedent to Lessee's right of

assignment:

(i) Lessee shall give Lessor reasonable notice of the proposed assignment with appropriate documentation as evidence that the proposed assignee qualifies as a permitted assignee; and

(ii) Except as otherwise provided in this Lease for a permitted mortgagee, the proposed assignee shall, in recordable form, expressly assume all the covenants and conditions of this Lease.

(c) Arbitration of Lessor's Disapproval. The effective date of the assignment shall be 30 days after Lessee's notice of the proposed assignment unless, within that time, Lessor gives notice of a valid objection that the proposed assignee is not a permitted assignee or of other reasonable grounds for disapproval. Lessor's failure to give notice within that time shall constitute a waiver of objection to the assignment. Promptly after Lessor gives notice of objection, unless Lessee yields to Lessor's objection, the issue shall be arbitrated. If the arbitration award is in favor of Lessee, the assignment shall be effective as if Lessor had not objected. If the award is in favor of Lessor, the assignment shall be a nullity.

(d) Lessee's Nonliability After Assignment. On any assignment made in accordance with the provisions and conditions of this Lease, Lessee shall have no further obligation under this Lease and, as between Lessor and Lessee, shall be considered to have assigned to assignee all claims against Lessor arising under this Lease. Nothing herein contained shall be construed to release Lessee from any liability or obligation arising before the effective date of the assignment.

(e) Lessee's Right to Sublet. Lessee shall have the right to sublet all or any part or parts of the Premises or the improvements, or both, and to assign, encumber, extend or renew any sublease, with the written approval of Lessor, which approval shall not be withheld unreasonably. Each sublease shall contain a provision, satisfactory to Lessor and to each leasehold mortgagee having an interest at the time the sublease is executed, requiring sublessee to attorn to Lessor or, in the event of any proceeding to foreclose any leasehold mortgage, to the leasehold mortgagee, or any person designated in a notice from leasehold mortgagee, if Lessee defaults under this Lease and if the sublessee is notified of Lessee's default and instructed to make sublessee's rental payments to Lessor or leasehold mortgage or

designated person as in this paragraph. Lessee shall, promptly after execution of each sublease, notify Lessor of the name and mailing address of the sublessee and shall, on demand, permit Lessor to examine and copy the sublease.

8. INSURANCE.

(a) Fire and Extended Coverage. Throughout the term, at Lessee's sole cost and expense, Lessee shall keep or cause to be kept insured all improvements located on or appurtenant to the Premises against loss or damage by fire and such other risks as are now or hereafter included in an extended coverage endorsement in common use for commercial structures, including vandalism and malicious mischief. The amount of the insurance shall be sufficient to prevent either Lessor or Lessee from becoming a co-insurer under the provisions of the policies, but in no event shall the amount be less than 80% of the actual replacement cost, excluding costs of replacing excavations, foundations, curbs, and paving, but without deduction for depreciation (herein "full insurable value"). Lessor shall not carry any insurance the effect of which would be to reduce the protection or payment to Lessee under any insurance that this Lease obligates Lessee to carry. If any dispute whether the amount of insurance complies with the above cannot be resolved by agreement, Lessor may, not more than once every 60 months, request the carrier of the insurance then in force to determine the full insurable value as defined in this provision, and the resulting determination shall be conclusive between the parties for the purpose of this paragraph. Lessee may include the holder of any mortgage on the leasehold or on the fee, or both, as a loss payee.

(b) Proceeds of Fire and Extended Coverage Insurance. Lessor shall, at Lessee's cost and expense, cooperate fully with Lessee to obtain the largest possible recovery, and all policies of fire and extended coverage insurance required by the preceding paragraph shall provide that the proceeds shall be paid to Lessee, and shall be deemed to be held in trust to the uses and purposes prescribed by this Lease. Any insurance proceeds remaining after complying with the provisions of this Lease relating to maintenance, repair, and reconstruction of the improvements shall be Lessee's sole property.

(c) Other Insurance and Indemnification.

(i) Public liability insurance.

Throughout the term, at Lessee's sole cost and expense, Lessee shall keep or cause to be kept in force, for the mutual benefit of Lessor and Lessee, comprehensive broad form general public liability insurance against claims and liability for personal injury, death or property damage arising from the use, occupancy, disuse or condition of the Premises, improvements or adjoining areas or ways, providing protection of at least \$1,000,000 combined single limits for bodily injury, death or property damage from any one accident or occurrence.

(ii) Proof of insurance. Lessee shall deliver to Lessor, in the manner required for notices, copies of all insurance policies or other proof of the insurance required by this Lease, together with evidence satisfactory to Lessor of payment required for procurement and maintenance of each such policy within 30 days after execution of this Lease for insurance required at its commencement and at least 10 days before expiration or other termination of an existing policy for any renewal or replacement.

(iii) Indemnification. Lessor shall not be liable, and Lessee shall defend and indemnify Lessor against all liability and claims of liability, for damage or injury to persons or property on or about the Premises from any cause, save and except the gross negligence or willful misconduct of Lessor, its agents or employees. Lessee waives all claims against Lessor for damage or injury to persons or property arising, or asserted to have arisen, from any cause related to the Premises, save and except the gross negligence or willful misconduct of Lessor, its agents or employees.

9. CONDEMNATION.

(a) Definitions. The following definitions apply in construing provisions of this Lease relating to a taking of or damage to all or any part of the Premises or improvements or any interest in them by eminent domain or inverse condemnation:

(i) "Taking" means the taking or damaging, including severance damage, by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a

final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under the threat of condemnation, in avoidance of the exercise of eminent domain, or while condemnation proceedings are pending. The taking shall be considered to take place as of the later of the date actual physical possession is taken by the condemnor or the date on which the right to compensation and damages accrues under California law.

(ii) "Total taking" means the taking of the fee title to all the Premises and the improvements on the Premises, which shall be considered to include any off-site improvements effected by Lessee to serve the Premises or the improvements on the Premises.

(iii) "Substantial taking" means the taking of so much of the Premises or improvements or both that the remaining Premises would not be economical and feasibly usable by Lessee.

(iv) "Partial taking" means any taking of the fee title that is not either a total or a substantial taking.

(v) "Improvements" mean all products of skill, artifice, plan or design for construction on, modification of or planned use of existing structures, or natural or cultivated earth contours on the Premises, including, but not limited to: Building structures, fixtures, fences, utility installations, excavations, surfacing, water banks or channels, and grading; landscaping, whether occurring on the Premises naturally or in place by human design or effort, and whether coming into being on the Premises before or after commencement of the term, and earth contours forming part of the landscaping design; and artistic and ornamental components of any of the above.

(vi) "Notice of intended taking" means any notice or notification on which a reasonably prudent man would rely and which he would interpret as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Lease. The notice is considered to have been received when a party to this Lease receives from the condemning agency or entity a notice of intent to take, in writing, containing a description or map of the taking reasonably defining the extent of the taking.

(vii) "Award" means compensation paid for the taking whether pursuant to judgment or by agreement or otherwise.

(b) Notice to Other Party. The party receiving any notice of the kinds specified below shall promptly give to the other party notice of the receipt, contents, and date of the notice received:

(i) Notice of intended taking;

(ii) Service of any legal process relating to condemnation of the Premises or improvements;

(iii) Notice in connection with any proceedings or negotiations with respect to such a condemnation; or

(iv) Notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.

(c) Representatives of Parties; Effectuation. Lessor, Lessee, and all persons and entities holding under Lessee shall each have the right to represent his or its respective interests in each proceeding or negotiation with respect to a taking or intended taking, and to make full proof of his or its claims. No agreement, settlement, sale or transfer to or with the condemning authority shall be made without the consent of Lessor and Lessee. Lessor and Lessee each agrees to execute and deliver to the other any instruments that may be required to effectuate or facilitate the provisions of this Lease relating to condemnation.

(d) Total or Substantial Taking.

(i) On a total taking, Lessee's obligation to pay rent shall terminate on the date of taking, but Lessee's interest in the leasehold shall continue until the taking is completed by deed, contract or final order of condemnation.

(ii) If the taking is substantial, Lessee may, by notice to Lessor given within 90 days after Lessee receives notice of intended taking, elect to treat the taking as a substantial taking. If Lessee does not so notify Lessor, the taking shall be deemed a partial taking. If Lessee gives such notice and Lessor gives Lessee notice disputing Lessee's contention within 30 days following Lessee's notice, the dispute shall be

promptly determined by arbitration. If Lessor gives no such notice, the taking shall be considered a substantial taking. A substantial taking shall be treated as a total taking if Lessee delivers possession to Lessor within 60 days after determination that the taking was a substantial taking and Lessee is not in default under the Lease and has complied with all lease provisions concerning apportionment of the award. If these conditions are not met, the taking shall be treated as a partial taking.

(iii) Lessee may continue to occupy the Premises and improvements until the condemnor takes physical possession. However, at any time following notice of intended total taking, or within the time limits specified for delivering possession in the provision on substantial taking, Lessee may elect to deliver possession of the Premises to Lessor before the actual taking. The election shall be made by notice declaring the election and covenanting to pay all rents required under this Lease to the date of taking. Lessee's right to apportionment of or compensation from the award shall then accrue as of the date Lessee goes out of possession.

(iv) On a total taking, all sums, including damages and interest, awarded for the fee or leasehold or both, shall be deposited promptly with Placer Title Company as escrow agent, and shall be distributed and disbursed in the following order of priority:

A. First, all real and personal property taxes constituting a lien on the Premises or improvements;

B. Second, the balance due under any note and mortgage encumbering the fee and having priority over the Lease;

C. Third, the balance due under any note and leasehold mortgage to which the fee is not subordinated;

D. Fourth, the balance due under any note and mortgage encumbering the fee but not having priority over the Lease, provided that the amount so paid shall be deducted from any amounts otherwise due to Lessor;

E. Fifth, to Lessor a sum equal to the total award less the sum of: (1) Any award that may

be made for the taking of or injury to Lessee's improvements; (2) any award on account of any cost or loss that Lessee may sustain in the removal and relocation of Lessee's chattels and trade fixtures; and (3) any portion of the award to Lessee for anticipated or lost profits or damages because of detriment to Lessee's business or any special damages of Lessee; if no portion of the damage is contained in this subparagraph are included in the total award for taking the fee title, Lessee shall have the absolute right to prosecute Lessee's own claim for damages as permitted by law and to receive and keep all proceeds free from any claim of Lessor; and (4) the market value of any option to buy and of any option to renew or extend the term contained in the Lease.

(e) Partial Taking.

(i) On a partial taking, this Lease shall remain in full force and effect, covering the remaining property, except that the minimum rent shall be reduced in the same ratio as the percentage of the area of the ground taken bears to the total area of the Premises.

(ii) Promptly after a partial taking, at Lessee's expense and in the manner specified in the provisions of this Lease relating to maintenance, repairs, and alterations, Lessee shall repair, alter, modify or reconstruct the improvements (hereinafter referred to as "restoring") so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. If Lessee does not repair, alter, modify or reconstruct (hereinafter referred to as "repair"), the cost of such repair shall be deducted from Lessee's share of the award and paid to any leasehold mortgagee demanding it, and otherwise to Lessor.

(iii) Lessee is relieved of the duty to, but may, repair, alter, modify or reconstruct the improvements if a partial taking occurs during the final three years of the term. If Lessee elects to be relieved of such duty, Lessee shall, within 60 days after Lessee receives notice of intended taking, give Lessor notice of election to claim such relief. Lessee thereupon shall comply with all conditions described as conditions in the provisions of this Lease relating to damage or destruction during the final years of the term. If the conditions described in this paragraph are met, the award shall be apportioned as for a substantial taking, applying the requirements of this provision

relating to Lessee's obligations; provided Lessee's right, title, and interest in the land, improvements and leasehold estate and all options not previously exercised or relinquished shall continue until the taking is completed by deed, contract or final order of condemnation. If all the foregoing conditions for relief are satisfied, the cost of such repair, alteration, modification or reconstruction shall be deducted from Lessee's share of the award and paid to any leasehold mortgagee demanding it by notice within 60 days after Lessee's notice of election, and otherwise to Lessor.

(f) Apportionment; Distribution of Award for Partial Taking. On a partial taking, all sums, including damages and interest, awarded for the fee title or the leasehold, or both, shall be deposited promptly with Placer Title Company as escrow agent and shall be distributed and disbursed in the following order of priority:

(i) First, to the cost of restoring the leasehold improvements, plus any amount assessed, awarded, paid or incurred to remove or relocate subtenants, plus any amount awarded for detriment to business.

(ii) Second, to Lessor a sum equal to the total award less the sum of:

A. Any award that may be made for taking of or injury to Lessee's improvements; and

B. Any award on account of any cost or loss that Lessee may sustain in the removal and relocation of Lessee's chattels and trade fixtures; and

C. Any portion of the award to Lessee for anticipated or lost profits or damages because of detriment to Lessee's business or any special damages of Lessee; if no portion of the damages contained in this subparagraph are included in the total award for taking the fee title, Lessee shall have the absolute right to prosecute Lessee's own claim for damages as permitted by law and to receive and keep all proceeds free from any claim of Lessor; and

D. The market value of any option to renew or extend the term contained in the Lease.

(g) Limited Takings.

(i) Taking of less than fee title. On the taking, other than a temporary taking, of less than a fee title interest in the Premises or improvements or both, the question whether the taking is total, substantial or partial and the effects on term, rent, and apportionment of award shall be determined by mutual agreement of the parties, as provided herein, or by arbitration.

(ii) Taking for temporary use. On any taking of the temporary use of all or any part or parts of the Premises or improvements or both for a period, or any estate less than a fee, ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way, and Lessee shall be entitled to any award for the use or estate taken. If a result of the taking is to necessitate expenditures for changes, repairs, alternations, modifications or reconstruction of the improvements to make them economically viable and a practical whole, Lessee shall receive, hold, and disburse the award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens and claims, Lessee shall be entitled to any surplus and shall be liable for any deficit. If any such taking is for a period extending beyond the expiration date of the term, the taking shall be treated under the foregoing provisions for total, substantial, and partial takings.

10. DEFAULT AND REMEDIES

(a) Lessee's Default. Each of the following events shall be a default by Lessee and a breach of this Lease:

(i) Failure to perform lease covenants. Abandonment or surrender of the Premises or of the leasehold estate, or failure or refusal to pay when due any installment of rent or any other sum required by this Lease to be paid by Lessee, or to perform as required or conditioned by any other covenant or condition of this Lease.

(ii) Attachment or other levy. The subjection of any right or interest of Lessee to attachment, execution or other levy or to seizure under legal process if not released within 30 days; provided that, if Lessor's fee title is not subordinated, the

foreclosure of any mortgage permitted by the provisions of this Lease relating to purchase or construction of improvements shall not be construed as a default within the meaning of this paragraph.

(iii) Appointment of receiver. The appointment of a receiver to take possession of the Premises or improvements or of Lessee's interest in the leasehold estate or of Lessee's operations on the Premises for any reason, including, but not limited to, assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings, but not including receivership pursuant to any mortgage permitted by the provisions of this Lease relating to purchase or construction of improvements or instituted by Lessor, the event of default being not the appointment of a receiver at Lessor's instance, but the event justifying the receivership, if any.

(iv) Insolvency; bankruptcy. An assignment by Lessee for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Lessee under any law for purpose of adjudicating Lessee a bankrupt; or for extending time for payment, adjustment or satisfaction of Lessee's liability; or for reorganization, dissolution or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated or otherwise permanently stayed or terminated within 60 days after the assignment, filing or other initial event.

(v) Default in mortgage payment. Default or delinquency in the payment of any loan secured by a mortgage permitted by this Lease to be placed by Lessee against Lessor's title or the leasehold, or both.

(b) Notice and Right to Cure. Notwithstanding any contrary provisions in this Lease, it is agreed:

(i) Definition of default. The word "default" in this Lease includes breach.

(ii) Notice as precondition to Lessor's remedies. As a precondition to pursuing any remedy for an alleged default by Lessee, Lessor shall, before pursuing any remedy, give notice of default to Lessee and to all qualifying subtenants and mortgagees whose names and addresses were previously given to Lessor in a

notice or notices from Lessee or any qualifying mortgagee stating that the notice was for the purpose of notice under this provision. A qualifying subtenant is a subtenant in possession under an existing sublease which is proper under this Lease. A qualifying mortgagee is a mortgagee under a mortgage then existing under the provisions of this Lease relating to purchase or construction of improvements. Each notice of default shall specify in detail the alleged event of default and the intended remedy.

(iii) Mortgagee's right to cure defaults.

Each mortgagee under a mortgage then existing, under the provisions of this Lease permitting mortgages relating to purchase or construction of improvements, shall have 30 days after service of notice of default within which, at mortgagee's election, either:

A. To cure the default if it can be cured by the payment or expenditure of money; or

B. If mortgagee does not elect to cure by the payment or expenditure of money, or if the default cannot be so cured, to cause the prompt initiation of foreclosure, to prosecute it diligently to conclusion, and to perform and comply with all other covenants and conditions of this Lease requiring the payment or expenditure of money by Lessee until the leasehold estate shall be released or reconveyed from the effect of the mortgage or until it shall be transferred or assigned pursuant to or in lieu of foreclosure.

(iv) Lessee's right to cure defaults. If the alleged default is nonpayment of rent, taxes or other sums to be paid by Lessee as provided in the paragraph on rent, or elsewhere in this Lease directed to be paid as rent, Lessee shall have 15 days after notice is given to cure the default. For the cure of any other default, Lessee shall promptly and diligently after the notice commence curing the default and shall have 30 days after notice is given to complete the cure plus any additional period that is reasonably required for the curing of the default.

(v) Rights of subtenant; nondisturbance.

Any subtenant of the entire Premises and any subtenant of such a subtenant shall have the right, at its election, to cure a curable default under this Lease, or under any mortgage then existing under the provisions of this Lease relating to purchase or construction of improvements, or under both. If any such subtenant

cures all defaults then existing, or if any such subtenant cures all defaults that are then curable and other defaults are non-curable, or if all then existing defaults are non-curable, that subtenant's possession and use shall not be disturbed by Lessor or by mortgagee as long as the subtenant performs the sublease's provisions, the subtenant attorns to Lessor and mortgagee according to their respective interests, and subsequent defaults are cured as in the above provisions or are non-curable.

(vi) Lessor's right to cure Lessee's defaults. After expiration of the applicable time for curing a particular default, or before the expiration of that time in the event of an emergency, Lessor may, at Lessor's election, but is not obligated to, make any payment required of Lessee under this Lease or under any note or other document pertaining to the financing of improvements or fixtures on the Premises, or perform or comply with any covenant or condition imposed on Lessee under this Lease or any such note or document, and the amount so paid plus the reasonable cost of any such performance or compliance, plus interest on such sum at the rate of 10% per year from the date of payment, performance or compliance (herein called "act"), shall be deemed to be additional rent payable by Lessee through the next succeeding installment of rent. No such act shall constitute a waiver of default or of any remedy for default or render Lessor liable for any loss or damage resulting from any such act.

(c) Lessor's Remedies. If any default by Lessee shall continue uncured, following notice of default as required by this Lease, for the period applicable to the default under the applicable provision of this Lease, Lessor has the following remedies in addition to all other rights and remedies provided by law or equity, to which Lessor may resort cumulatively or in the alternative:

(i) Termination. Lessor may, at Lessor's election, terminate this Lease by giving Lessee notice of termination. On the giving of the notice, all Lessee's rights in the Premises and in all improvements shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Premises and all improvements in broom-clean condition, and Lessor may reenter and take possession of the Premises and all remaining improvements and eject all parties in possession or eject some and not others or eject none; provided that no subtenant qualifying under nondisturbance provisions of this Lease shall be

ejected. Termination under this paragraph shall not relieve Lessee from the payment of any sum then due to Lessor or from any claim for damages previously accrued or then accruing against Lessee.

(ii) Reentry without termination. Lessor may, at Lessor's election, reenter the Premises and, without terminating this Lease, at any time and from time to time, relet the Premises and improvements or any part or parts of them for the account and in the name of Lessee or otherwise. Lessor may, at Lessor's election, eject all persons or eject some and not others or eject none; provided that no subtenant qualifying under nondisturbance provisions of this Lease shall be ejected. Lessor shall apply all rents from reletting as in the provision on assignment of subrents. Any reletting may be for the remainder of the term or for a longer or shorter period. Lessor may execute any leases made under this provision either in Lessor's name or in Lessee's name and shall be entitled to all rents from the use, operation or occupancy of the Premises or improvements or both. Lessee shall nevertheless pay to Lessor on the due date specified in this Lease the equivalent of all sums required of Lessee under this Lease, plus Lessor's expenses, less the avails of any reletting or attornment. No act by or on behalf of Lessor under this provision shall constitute a termination of this Lease unless Lessor gives Lessee notice of termination.

(iii) Lessee's personal property. Lessor may, at Lessor's election, use Lessee's personal property and trade fixtures or any of such property and fixtures without compensation and without liability for use or damage, or store them for the account and at the cost of Lessee. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time.

(iv) Recovery of rent. Lessor shall be entitled, at Lessor's election, to each installment of rent or to any combination of installments for any period before termination, plus interest at the rate of 10% per year from the due date of each installment. Avails of reletting or attorned subrents shall be applied, when received, as follows: First, to Lessor to the extent that the avails for the period covered do not exceed the amount due from and charged to Lessee for the same period and the balance to Lessee. Lessor shall make reasonable efforts to mitigate Lessee's liability under this provision.

(v) Damages. Lessor shall be entitled, at Lessor's election, to damages in the following sums:

A. All amounts that would have fallen due as rent between the time of termination of this Lease and the time of the claim, judgment or other award, less the avails of all relettings and attornments and less all amounts by which Lessor should reasonably have mitigated those rental losses, plus interest on the balance at the rate of 10% per year; and

B. The "worth" at the time of the claim, judgment or other award of the amount by which the unpaid rent for the balance of the term exceeds the then fair rental value of the Premises at the lower of the fair rental value as then encumbered by the Lease and improvements and the fair rental value unencumbered by the Lease and improvements. "Worth," as used in this provision, is computed by discounting the total at the discount rate of the Federal Reserve Bank of San Francisco at the time of the claim, judgment or award plus 1%.

(vi) Assignment of subrents. Lessee assigns to Lessor all subrents and other sums falling due from subtenants, licensees, and concessionaires (herein called "subtenants") during any period in which Lessor has the right under this Lease, whether exercised or not, to reenter the Premises for Lessee's default, and Lessee shall not have any right to such sums during that period. This assignment is subject and subordinate to any and all assignments of the same subrents and other sums made, before the default in question, to a mortgagee under any mortgage permitted by the provisions of this Lease relating to purchase or construction of improvements. Lessor may, at Lessor's election, reenter the Premises and improvements with or without process of law, without terminating this Lease, and either or both collect these sums or bring action for the recovery of the sums directly from such obligors. Lessor shall receive and collect all subrents and avails from reletting, applying them: First, to the payment of reasonable expenses (including attorneys' fees or brokers' commissions, or both) paid or incurred by or on behalf of Lessor in recovering possession, placing the Premises and improvements in good condition, and preparing or altering the Premises or improvements for reletting; second, to the reasonable expense of securing new lessees; third, to the fulfillment of Lessee's covenants to the end of the term; and fourth, to Lessor's uses and purposes. Lessee shall nevertheless pay to Lessor on the due dates specified in this Lease

the equivalent of all sums required of Lessee under this Lease, plus Lessor's expenses, less the avails of the sums assigned and actually collected under this provision. Lessor may proceed to collect either the assigned sums or Lessee's balances, or both, or any installment or installments of them, either before or after expiration of the term.

(d) Notice of Lessor's Default; Lessee's Waiver. Lessor shall not be considered to be in default under this Lease unless Lessee has given notice specifying the default and Lessor has failed for 30 days to cure the default, if it is curable, or to institute and diligently pursue reasonable, corrective or ameliorative acts for the non-curable defaults. Lessee shall have the right of termination for Lessor's default only after notice to and consent by all mortgagees under mortgages then existing under the provisions of the Lease relating to purchase or construction of improvements.

(e) Unavoidable Default or Delay. Any prevention, delay, nonperformance or stoppage due to any of the following causes shall excuse nonperformance for a period equal to any such prevention, delay, nonperformance or stoppage, except the obligations imposed by this Lease for the payment of rent, taxes, insurance or obligations to pay money that are treated as rent. The causes referred to above are: Strikes, lockouts, labor disputes, failure of power, irresistible super human cause, acts of public enemies of this state or of the United States, riots, intersurrections, civil commotion, inability to obtain labor or materials or reasonable substitutes for either, governmental restrictions or regulations or controls, casualties not contemplated by insurance provisions of this Lease, or other causes beyond the reasonable control of the party obligated to perform.

(f) Waiver; Voluntary Acts. No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by either party shall give the other any contractual right by custom estoppel or otherwise. The subsequent acceptance of rent pursuant to this Lease shall not constitute a waiver of any preceding default by Lessee other than default in the payment of the particular rental payment so accepted, regardless of Lessor's knowledge of the preceding breach at the time of accepting the rent, nor shall acceptance of rent or any other payment after

termination constitute a reinstatement, extension or renewal of the Lease, a revocation of any notice or other act by Lessor.

11. GENERAL CONDITIONS AND MISCELLANEOUS PROVISIONS

(a) Notice.

(i) As used in this Lease, notice includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, and appointment. No notice of the exercise of any option or election is required unless the provision giving the election or option expressly requires notice. Unless the provisions of this Lease on rent direct otherwise, rent shall be sent in the manner provided for giving notice.

(ii) All notices must be in writing; provided that no writing other than the check or other instrument representing the rent payment itself need accompany the payment of rent.

(iii) Notice is considered given either when delivered in person to the recipient named below, or five days after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage and postal charges prepaid, addressed by name and address to the party or person intended as follows:

Notice to Lessor:

William C. Norton
City Manager
City of Alameda
Santa Clara & Oak Streets
Alameda, CA 94501

Notice to Lessee:

Stephen K. Brimhall
Executive Vice President
Doric Development, Inc.
1141 Harbor Bay Parkway
Alameda, CA 94501

(iv) Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

(v) Each recipient named must be an individual person. If more than one recipient is named, delivery of notice to any one such recipient is sufficient. If none of the recipients named in the

latest designation of recipient is available for delivery in person, and if the notice addressed by mail to each recipient named in the latest designation of recipient is returned to the sender undelivered, notice shall be sufficient if sent by mail as above to the party as named in this Lease, unless the name or identify of the party has changed as permitted in this Lease and proper notice of the change has been given, in which event the notice shall be sufficient if sent by mail as above to the party named in the latest notice designating the party, and the notice is considered given when the first attempt to give notice was properly made.

(b) Performance of Lessee's Covenants by Others. Lessee may, at Lessee's election, delegate performance of any or all covenants to any one or more subtenants, or subtenants of subtenants, and the performance so delegated shall be deemed Lessee's performance. This provision shall not be considered to permit or broaden the right of assignment or subletting beyond the provisions of this Lease relating to assignment and subletting.

(c) Nonmerger of Fee and Leasehold Estates. If both Lessor's and Lessee's estates in the Premises or the improvements, or both, become vested in the same owner, this Lease shall nevertheless not be destroyed by application of the doctrine of merger except at the express election of the owner and the consent of the mortgagee or mortgagees under all mortgages existing under provisions of this Lease relating to purchase or construction of improvements.

(d) Attorneys' Fees. If either party brings any action or proceeding to enforce, protect or establish any right or remedy pursuant to this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees. Arbitration is an action or proceeding for purposes of this provision.

(e) Arbitration; Appraisal.

(i) Either party may require the arbitration of any matter arising under or in connection with this Lease. Arbitration is initiated and required by giving notice specifying the matter to be arbitrated. If action is already pending on any matter concerning which the notice is given, the notice is ineffective unless given before the expiration of 10 days after service of process on the person giving the notice.

(ii) Except as provided to the contrary in these provisions on arbitration, the arbitration shall be in conformity with and subject to the provisions of the California Code of Civil Procedure relating to arbitration as they stand amended at the time of the notice. The arbitrators shall be bound by this Lease. Pleadings in any action pending on the same matter shall, if the arbitration is required or consented to, be deemed amended to limit the issues to those contemplated by the rules prescribed above. Each party shall pay one-half the cost of arbitration, including arbitrator's fees. Attorneys' fees shall be awarded as separately provided in this Lease.

(iii) Appointment of appraisers shall be made in the manner required for the appointment of arbitrators unless expressly provided to the contrary in the applicable provisions of this Lease; provided that neither party may require appraisal of any matter for which appraisal is not specified in the applicable provisions of this Lease.

(iv) There shall be three arbitrators appointed as follows: Within 15 days after notice requiring arbitration, each party shall appoint one arbitrator and give notice of the appointment to the other party. The two arbitrators shall choose a third arbitrator within 30 days after appointment of the second. If either party fails to appoint an arbitrator, or if the two arbitrators fail to choose a third, the appointment shall be made by the then presiding judge of the Alameda County Superior Court, acting in his individual and nonofficial capacity, on the application of either party and on 10 days' notice to the other party; provided that either party may, by notice given before commencement of the arbitration hearing, consent to arbitration by the arbitrator appointed by the other party. In that event, no further appointments of arbitrators shall be made and any other arbitrators previously appointed shall be dismissed.

(f) Estoppel Certificates. At any time, and from time to time, within 15 days after notice of request by either party, the other party shall execute, acknowledge, and deliver to the requesting party or to such other recipient as the notice shall direct, a statement certifying that this Lease is unmodified and in full force and effect or, if there have been modifications, that it is in full force and effect as modified in the manner specified in the statement. The statement shall also state the dates to which the rent and any other charges have been paid in advance. The

statement shall be such that it can be relied on by any auditor, creditor, commercial banker, and investment banker of either party, and by any prospective purchaser and/or encumbrancer of the Premises or improvements or both or of all or any part or parts of Lessee's or Lessor's interests under the Lease. Lessee's or Lessor's failure to execute, acknowledge, and deliver on request the certified statement described above within the specified time shall constitute acknowledgment by such party to all parties entitled to rely on the statement that this Lease is unmodified and in full force and effect and that the rent and other charges have been duly and fully paid to and including the respective due dates immediately preceding the date of the notice of request and shall constitute a waiver, with respect to all persons entitled to rely on the statement, of any defaults that may exist before the date of the notice.

(g) Joint and Several Obligations. If either Lessor or Lessee consists of more than one person, the obligations of all such persons is joint and several.

(h) Exhibits; Addenda. All exhibits and addenda to which reference is made in this Lease are incorporated in the Lease by the respective references to them, whether or not they are actually attached, provided they have been signed or initialed by the parties. Reference to "this Lease" includes matters incorporated by reference.

(i) Entire Agreement. This Lease contains the entire agreement between the parties in regard to the use, occupation, and development of the Premises. No promise, representation, warranty or covenant not included in this Lease has been or is relied on by either party in that regard. Each party has relied on his own examination of this Lease, the counsel of his own advisors, and the warranties, representations, and covenants in the Lease itself. The failure or refusal of either party to inspect the Premises or improvements, to read the Lease or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention or claim that might have been based on such reading, inspection or advice.

(j) Severability. The invalidity or illegality of any provision shall not affect the remainder of the Lease.

(k) Successors. Subject to the provisions of

this Lease on assignment and subletting, each and all of the covenants and conditions of this Lease shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns, and personal representatives of the respective parties.

(1) Lessor's Right to Liquidated Damages.

If, within one year after the later of Lessor's approval of a vesting tentative subdivision map for Village V of Harbor Bay Isle and Lessee's receipt of all approvals and permits necessary to develop and improve the Premises for the purposes of this Lease, Lessee has not made sufficient improvements to the Premises and has not actually opened for business for the parking and storage of at least a reasonable number of recreational vehicles and boats, the parties agree that Lessee shall pay Lessor, as liquidated damages, in addition to minimum rent, the sum of \$5,000 for each year or any part thereof beyond the first year after the approval described above. The damages shall be paid on the first day of each such year. No more than \$50,000 in the aggregate shall be required to be paid pursuant to this paragraph. The parties agree that the \$5,000 annual sum is reasonable considering all of the circumstances existing on the date of this Agreement, including the relationship of the sum to the range of harm to Lessor that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient.

12. EXPIRATION; TERMINATION

(a) Lessee's Duty to Surrender. At the expiration or earlier termination of the term, Lessee shall surrender to Lessor the possession of the Premises. Surrender or removal of improvements, fixtures, and trade fixtures shall be as directed in the provisions of this Lease on ownership of improvements at termination. Lessee shall leave the surrendered Premises and any other property in good and broom-clean condition, except as provided to the contrary in the provisions of this Lease on maintenance and repair of improvements. All property that Lessee is required to surrender shall become Lessor's property at termination of the Lease. All property that Lessee is not required to surrender but that Lessee does abandon shall, at Lessor's election, become Lessor's property at termination. If Lessee fails to surrender the Premises at the expiration or sooner termination of this Lease, Lessee shall defend and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including, without limitation,

claims made by any succeeding tenant founded on or resulting from Lessee's failure to surrender.

(b) Holding Over. This Lease shall terminate without further notice at expiration of the term. Any holding over by Lessee after expiration shall not constitute a renewal or extension or give Lessee any rights in or to the Premises, except as otherwise expressly provided in this Lease.

13. EXECUTION; ABSTRACT, MEMORANDUM OR SHORT FORM OF LEASE

(a) Recordation of Abstract, Memorandum or Short Form of Lease. This Lease shall not be recorded; only an abstract, memorandum or short form of this Lease shall be recorded. The parties shall execute the abstract, memorandum or short form in a form and substance as required by a title insurance company insuring Lessee's leasehold estate or the interest of any leasehold mortgagee or fee mortgagee, and sufficient to give constructive notice of the Lease to subsequent purchasers and mortgagees.

EXECUTED at Alameda, California, this ____ day of _____, 1989.

Approved as to form:

CITY OF ALAMEDA, a municipal corporation

BRUCE QUAN, JR.
City Attorney

By _____
Its _____

Authorized by Council
Resolution No. _____
Adopted: _____

HARBOR BAY ISLE ASSOCIATES,
a general partnership

By DORIC DEVELOPMENT, INC.,
general partner

By _____
Its _____

B-10

GUN CLUB SITE
ALAMEDA, CALIFORNIA

BEGINNING at the most Northern corner of Parcel 3, Parcel Map No. 4112 recorded on September 13, 1983, in Book 141 of Parcel Maps at Pages 10 and 11, Alameda County Records.

THENCE along the Southeasterly and Easterly lines of Tract 2532 recorded in Book 48 of Maps, Page 59, Alameda County Records North 41°39'21" East 339.46 feet;

THENCE North 6°27'55" West 360.00 feet to the Southwesterly line of Maitland Drive;

THENCE along said Southwesterly line of Maitland Drive South 32°11'11" East 949.45 feet to the Northwesterly line of that portion of Harbor Bay Parkway described in City of Alameda Resolution No. 9885, Recorder's Series No. 82-140680;

THENCE along said Northwesterly line South 24°17'09" West 95.63 feet to the Northeasterly line of above said Parcel 3, Parcel Map No. 4112;

THENCE along said Northwesterly line North 66°47'25" West 708.88 feet to the POINT OF BEGINNING;

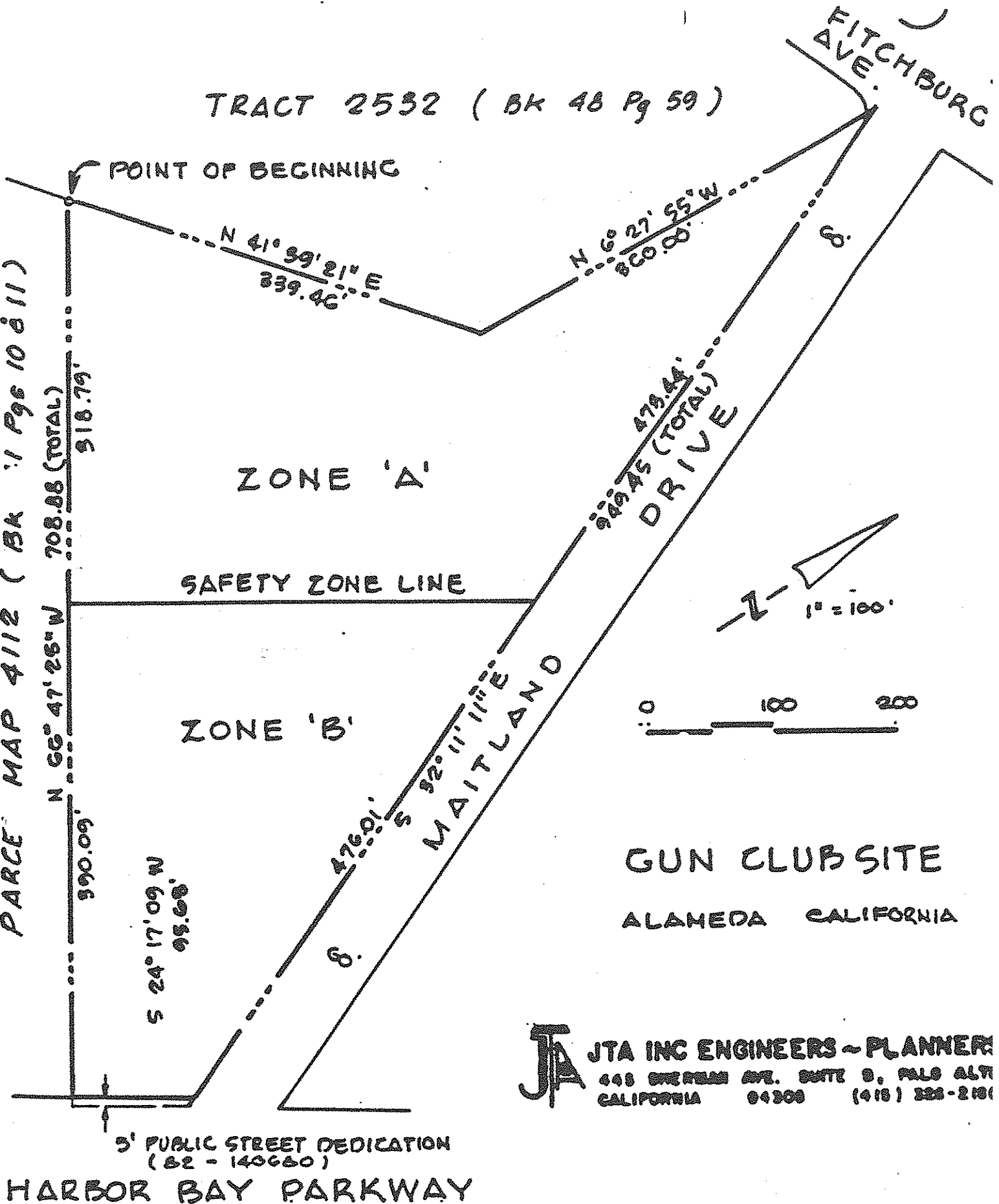
CONTAINING 4.9897 acres of land more or less.

March 9, 1989
4013-188

EXHIBIT A

TRACT 2532 (BK 48 Pg 59)

PARCE MAP 4112 (BK 1 Pg 10 & 11)



JTA JTA INC ENGINEERS - PLANNERS
448 OVERMAN AVE. SUITE 9, PALO ALTO
CALIFORNIA 94306 (415) 325-2101

JOB NO. 4013 - 188

INFRASTRUCTURE AGREEMENT

This AGREEMENT is entered into this _____ day of _____, 1989 by and between CITY OF ALAMEDA and municipal corporation of the State of California ("CITY"), and HARBOR BAY ISLE ASSOCIATES, a general partnership ("HBIA"), HARBOR BAY VILLAGE FOUR ASSOCIATES, a limited partnership ("HBVFOUR"), and HARBOR BAY VILLAGE FIVE ASSOCIATES, a limited partnership ("HBVFIVE") (collectively "HARBOR BAY") pursuant to the settlement agreement between these parties dated November 3, 1988.

WHEREAS, the settlement agreement requires the parties to enter into a written agreement setting forth existing and anticipated future issues and problems involving access to Bay Farm Island and Harbor Bay Isle ("HBI") and the responsibilities of CITY and HBIA in regard to planning and funding solutions to those problems;

WHEREAS, the parties recognize that the build-out of the remaining residential portion of HBI and the development and completion of the build-out of the HBI Business Park will add traffic on streets and intersections providing access to Bay Farm Island and HBI;

WHEREAS, by this agreement the parties intend to identify the existing and anticipated future problems relating to access to Bay Farm Island and HBI and to assign planning responsibility for improvement of access

and mitigation of effects of existing and additional traffic volume, access between HBI and Bay Farm Island residential areas and the HBI Business Park, transit services, including a ferry service to San Francisco, and transportation system management measures; and

WHEREAS, the settlement agreement provides for the allocation of certain taxes to be set aside and expended only upon infrastructure projects relating to access to Bay Farm Island and HBI;

NOW, THEREFORE, the parties agree as follows:

1. Access Problems and Issues. The parties hereby identify the specific existing or anticipated future access problems, projects and/or issues ("Traffic Improvement Projects") involving Bay Farm Island and HBI as set forth in Exhibit "A" attached hereto. City and HBIA agree that the presently identified Traffic Improvement Projects fall into two categories, relating in large part to their proximity to HBI and the extent of HBI's impact upon the underlying cause(s) of or need(s) for such projects. The City or local share of the cost of the Projects included in Group One of Exhibit A shall be paid one-half from the special Traffic Improvement Fund described in paragraph 2 below and one-half from other City funds. The City or local share of the cost of those Projects included in Group Two of Exhibit A shall be paid entirely from the Traffic Improvement Fund.

Traffic Improvement Projects may be added to either category, or new categories of such projects may be created from time-to-time by mutual agreement of City and Harbor Bay. City and HARBOR BAY agree to work together to find and/or maximize other federal, state and local sources of funds for both categories of projects, so long as there is no impact upon City's revenues for other purposes.

2. Special Traffic Improvement Fund.

a. The City shall immediately create and segregate a special fund ("Traffic Improvement Fund") to be used only for the following purposes: payment of the costs of identifying and mitigating access problems to Bay Farm Island and HBI, including, but not limited to, planning, studies, design and construction of mitigation projects identified in Exhibit "A" attached hereto, regardless of whether such activity is carried out by the City alone or in conjunction with other entities or agencies. The mitigation work and projects identified by this agreement are a public benefit intended to benefit all of the citizens of the City. The City shall pay into the Traffic Improvement Fund, from and after the date of execution of this agreement and ending at such time as a resolution adopted by the City Council certifies that the fund has a balance sufficient to complete payment for all work and projects required as a result of this agreement:

(1) All improvement taxes collected by the City pursuant to Chapter 15 of the Alameda Municipal Code on all construction of any type in HBI from and after November 3, 1988; and

(2) 50% of the City's share of the difference between the amount of each installment of real property taxes received for all real property located in the entire HBI Business Park, regardless of ownership, for the tax year 1987-1988 and the amount of each installment of such taxes received by City during each subsequent tax year or portion thereof, beginning with the second installment of the 1988-1989 tax year and continuing until the conclusion of this agreement; attached hereto as Exhibit "B" is a schedule of the total and the City's share of HBI Business Park real property taxes for each installment of the 1987-1988 tax year.

b. Collectively, the taxes described in paragraphs 2a(1) and (2) shall be referred to as "Traffic Improvement Taxes." All Traffic Improvement Taxes required to be paid into the Traffic Improvement Fund shall be paid within ten days of receipt by City.

3. Planning and Reporting.

a. Commencing with the City's fiscal year beginning July 1, 1989, and on an annual basis thereafter, the City shall within the first 60 days of such year prepare a plan for solution of the traffic and

access problems addressed by this agreement and a schedule of costs, methods of financing or payment, and timing for construction of or otherwise accomplishing the solutions to such problems, both on a detailed basis for projects to be undertaken in the year of the plan and on a projected basis for anticipated future projects ("Annual Traffic Improvement Plan"). The Annual Traffic Improvement Plan shall be transmitted immediately after completion to HBIA for its review and comments and City shall implement reasonable proposals and suggestions for changes to the plan made by HBIA.

b. The initial plan shall be accompanied by a statement of the amounts and dates of Receipt of Traffic Improvement Taxes and of deposits into the special fund and the balance of the fund. Thereafter, on a quarterly basis, City shall provide HBIA with a report describing the progress of the work included in the then current Annual Traffic Improvement Plan and a statement showing the amounts, costs and proceeds of bond sales, if any, dates of receipt of Traffic Improvement Taxes, dates and amounts of deposits into the Traffic Improvement Fund, interest accrued, use or application of withdrawn funds and the balance of the fund as of the reporting date.

4. Limitation of Liability to Traffic Improvement Fund.

a. The cost of projects required to be undertaken by this agreement may be paid by the City

directly from the Traffic Improvement Taxes deposited in the Traffic Improvement Fund or from proceeds raised by the issuance and sale of bonds, deposited in the fund, or a combination thereof. If bonds are issued and sold, costs of sale and principal and interest on the bonds shall be paid only from the Traffic Improvement Fund and the bondholders shall have no recourse to the City if the Traffic Improvement Fund proves inadequate.

b. Payment from the Traffic Improvement Fund for property, goods or services shall be made only for such property, goods and services that may actually be sold or provided to the City during each year and only upon the actual transfer to the City of such property or goods or the performance of such services.

c. The City shall not be required to pay any obligation of the Traffic Improvement Fund from the City's general fund or by exercise of its tax powers. Nothing herein shall prevent the City from entering into agreements in excess of one year to effectuate work or projects required as a result of this agreement in order to acquire property or goods or procure services, so long as payment is contingent upon such transfer or performance.

d. At any time or from time-to-time, if City and HBIA agree that there is a need to proceed with or complete a Traffic Improvement Project or Projects

contemplated by this agreement prior to the time when the Traffic Improvement Fund would contain funds adequate for such purposes and the Traffic Improvement Taxes or other revenues of the fund are not sufficient to permit the sale of bonds to fund such project or projects, or if such bonds cannot be sold efficiently or economically, so long as there is no legal impediment, HBIA may, but shall not be required to:

(1) Prepay Traffic Improvement Taxes or otherwise loan sums to the Traffic Improvement Fund at commercially reasonable interest rates; or

(2) Use any and all lawful means to facilitate sale of bonds, or purchase bonds for its own account.

e. In the event that the Traffic Improvement Fund's final liability for the costs of Traffic Improvement Projects exceeds its revenues from all sources as described herein, then, and only then, shall HBIA be responsible for such excess costs.

EXECUTED at Alameda, California, on the date first above written.

Approved as to form:

CITY OF ALAMEDA, a municipal corporation of the State of California

City Attorney

By _____

Its _____

Authorized by Council
Resolution No.

Adopted _____

HARBOR BAY ISLE ASSOCIATES, a
general partnership

By DORIC DEVELOPMENT, INC.,
General Partner

By _____

Its _____

HARBOR BAY VILLAGE FOUR
ASSOCIATES, a limited
partnership

By DORIC DEVELOPMENT, INC.,
General Partner

By _____

Its _____

HARBOR BAY VILLAGE FIVE
ASSOCIATES, a limited
partnership

By DORIC DEVELOPMENT, INC.,
General Partner

By _____

Its _____

EXHIBIT A

EXHIBIT A

TRAFFIC IMPROVEMENT PROJECTS

Group 1 - 50% of city cost from traffic improvement fund:

1. Widening Doolittle Drive to four lanes between Harbor Bay Parkway and Island Drive;
2. Modification of the Doolittle Drive - Island Drive intersection;
3. Modification of the Otis Drive - Broadway intersection;
4. Modification of the Otis Drive - High Street intersection;
5. Modification of the Otis Drive - Fernside Blvd. intersection;
6. Modification of the High Street - Fernside Blvd. - Gibbons Drive intersection;
7. Increased capacity of the Bay Farm Island Bridge; and
8. Increased capacity of the High Street Bridge.

Group 2 - 100% of city costs from traffic improvement fund:

1. Construction of the Cross-Airport Roadway between Harbor Bay Parkway and 98th Avenue;
2. Construction of a new intersection between Harbor Bay Parkway and the Cross-Airport Roadway and realignment of Harbor Bay Parkway;
3. Realignment of the Maitland Road - Harbor Bay Parkway intersection to lessen residential incursion resulting from construction of the Cross-Airport Roadway;
4. Signalization as needed on Bay Farm Island; and
5. Transportation systems management programs for the HBI Business Park.

EXHIBIT B

EXHIBIT B SUMMARY OF HARBOR BAY BUSINESS PARK PROPERTY TAXES 1988-1989

Acres	Tax Ref.	Location	Assessed Value	Tax 1st	Tax 2nd	Tax Both
3.00	74-1339-019	Plaza 1, Lot 1; 1151 HBPW	3,725,000	18,625.00	18,625.00	37,250.00
2.95	74-1339-024	Plaza 1, Lot 2; 1141 HBPW	5,924,259	29,621.30	29,621.29	59,242.59
2.46	74-1339-023	Plaza 1, Lot 3; 1131 HBPW	5,237,528	26,187.64	26,187.64	52,375.28
0.87	74-1339-022	Plaza 1, Lot 4	37,619	188.10	188.09	376.19
1.10	74-1339-021	Plaza 1, Lot 5	22,192	110.96	110.96	221.92
1.00	74-1339-020	Plaza 1, Lot 6	21,640	108.20	108.20	216.40
13.87	74-1339-018	Plaza 2, Bat Tower	357,949	1,789.75	1,789.74	3,579.49
4.77	74-1339-025	Plaza 3, Lot 1; Rand	4,810,000	24,050.00	24,050.00	48,100.00
4.51	74-1339-026	Plaza 3, Lot 2	106,987	534.94	534.93	1,069.87
5.45	74-1339-016	Plaza 4, FHLB	15,647,300	78,236.50	78,236.50	156,473.00
5.50	74-1339-015	Plaza 4, Surgical Dynamics	137,956	689.78	689.78	1,379.56
1.00	74-1339-017	Plaza 4, Lake	25,836	129.18	129.18	258.36
24.21	74-1339-027	Plaza 5, Parkway Center	33,956,100	169,780.50	169,780.50	339,561.00
6.38	74-1339-004	Plaza 6, Lot 1; 1310 HBPW	3,391,704	16,958.52	16,958.52	33,917.04
6.25	74-1339-005	Plaza 6, Lot 2; 1320 HBPW	9,108,390	45,541.95	45,541.95	91,083.90
6.00	74-1339-006	Plaza 6, Lot 3; 1430 HBPW	3,073,029	15,365.15	15,365.14	30,730.29
5.75	74-1339-007	Plaza 6, Lot 4; 1420 HBPW	10,724,456	53,622.28	53,622.28	107,244.56
5.62	74-1339-008	Plaza 6, Lot 5; 1410 HBPW	3,039,737	15,198.69	15,198.68	30,397.37
2.15	74-1337-004	Plaza 7, Triton	5,404,172	27,020.86	27,020.86	54,041.72
4.12	74-1337-005	Plaza 7, Lot 2	193,245	966.23	966.22	1,932.45
2.47	74-1339-011	Plaza 8, Airport Center	1,308,615	6,543.08	6,543.07	13,086.15
2.47	74-1339-012	Plaza 8, Airport Center	1,728,765	8,643.83	8,643.82	17,287.65
2.53	74-1339-013	Plaza 8, Airport Center	1,070,676	5,353.38	5,353.38	10,706.76
2.53	74-1339-014	Plaza 8, Airport Center	1,070,676	5,353.38	5,353.38	10,706.76
11.20	74-1339-028	South Loop Road	263,024	1,315.12	1,315.12	2,630.24
5.00	74-1339-029	South Loop Road	117,421	587.11	587.10	1,174.21
2.41	74-1339-030	South Loop Road	56,597	282.99	282.98	565.97
3.00	74-1339-031	South Loop Road	70,453	352.27	352.26	704.53

Acres	Tax Ref.	Location	Assessed Value	Tax 1st	Tax 2nd	Tax Both
9.80	74-1339-032	South Loop Road	230,146	1,150.73	1,150.73	2,301.46
41.58	74-1040-029	Undeveloped-Ferry Terminal	973,474	4,867.37	4,867.37	9,734.74
5.00	74-1337-006	HBPW	117,060	585.30	585.30	1,170.60
5.15	74-1337-007	HBPW	120,572	602.86	602.86	1,205.72
9.14	74-1337-008	HBPW	213,987	1,069.94	1,069.93	2,139.87
9.14	74-1337-009	HBPW	213,987	1,069.94	1,069.93	2,139.87
10.01	74-1337-010	HBPW	234,354	1,171.77	1,171.77	2,343.54
5.02	74-1337-011	North Loop Road	117,529	587.65	587.64	1,175.29
7.99	74-1337-012	North Loop Road	187,062	935.31	935.31	1,870.62
10.05	74-1337-013	North Loop Road	235,291	1,176.46	1,176.45	2,352.91
4.85	74-1337-014	North Loop Road	113,548	567.74	567.74	1,135.48
1.18	74-1337-015	North Loop Road	27,626	138.13	138.13	272.26
2.56	74-1337-016	North Loop Road	59,934	299.67	299.67	599.34
1.29	74-1337-017	North Loop Road	30,202	151.01	151.01	302.02
1.27	74-1337-018	North Loop Road	29,734	148.67	148.67	297.34
0.75	74-1337-019	North Loop Road	17,510	87.55	87.55	175.10
0.88	74-1337-020	North Loop Road	20,648	103.24	103.24	206.48
0.84	74-1337-021	North Loop Road	19,685	98.43	98.42	196.85
0.80	74-1337-022	North Loop Road	18,760	93.80	93.80	187.60
0.77	74-1337-023	North Loop Road	18,001	90.01	90.00	180.01
0.81	74-1337-024	North Loop Road	19,072	95.36	95.36	190.72
1.54	74-1337-025	North Loop Road	36,054	180.27	180.27	360.54
1.63	74-1337-026	North Loop Road	38,162	190.81	190.81	381.62
1.58	74-1337-027	North Loop Road	36,991	184.96	184.95	369.91
1.67	74-1337-028	North Loop Road	39,098	195.49	195.49	390.98
0.45	74-1337-029	North Loop Road	10,555	52.78	52.77	105.55
0.99	74-1337-030	North Loop Road	23,127	115.64	115.63	231.27
1.00	74-1337-031	North Loop Road	23,412	117.06	117.06	234.12
1.43	74-1337-032	North Loop Road	33,479	167.40	167.39	334.79
1.34	74-1337-034	Restaurant Site	31,372	156.86	156.86	313.72
4.61	74-1337-035	Bay Edge Park	-	-	-	-
5.82	-	Roads-North Loop	-	-	-	-
0.15	-	Roads-Catalina	-	-	-	-
0.67	-	Roads-HBPW Widening	-	-	-	-

290.33

113,921.758 569,608.90 569,608.90 1,139,217.58

City Share of Taxes (.33305816)

189,712.89 189,712.81 379,425.70

1040

Scale 200'

PM 4043 136/40
PM 5274 172/4

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Б.К. Со

1025

Corrected: 9-27 fsp
Rev.

8-26-47	2-0-35H1
9-2-48	1-10-45 H1
4-22-53 H1	8-2-56
6-23-48 v	1-23-56 v
0-20-4900	4-7-58
11-15-44 H1	8-14-47 H1
11-17-44 H1	4-23-48 H1

Topographic map of San Francisco, California, showing the city's layout, streets, and surrounding areas. The map includes labels for various landmarks such as "San Francisco", "Golden Gate Bridge", and "Marina". It also features coordinate markings and a legend.

NOTES:

- Coordinates are based on California Coordinate System, Zone 3.
- REF: Coordinate Map (H&O-Pg 30)
- Panner Sur No 24773-4 (CASE 1 OR 5-2)
- Part of Ord Dwg 22-154 (CASE 2 OR 6-4)
- Part of Way Rec Map, IX ALA 226 CASE 3 OR 151
- Dial. Plans, IX ALA 226 - CO SUR 548-84
- EVI (Bt 40 Pg 33)
- PL 3775 133/41
- PL 4237 163/97
- PL 4238 146/89
- PL 3384 137/88
- PL 4497 152/73

Exhibit M page 12 of 14

NOTE: Coordinates are based on
California Coordinate System, Zone 3

REF: Coordinate Map (H&DO-Pg 30)
 Prefter Sur No 24773-4 (CASE 1 OR 3-2)
 Part of Oak Dug 22-154 (CASE 2 OR 6-4)
 Pt of Way Rec Map, IX ALA 226 (CASE 3 OR 151)
 Dred. Bl. and Map, IX ALA 226. CO SUR 548-84
 EW (Bk 40) (Pg 33)
 PG 3775 133/71
 PG 4237 145/51
 PG 4238 146/51
 PG 3864 137/60
 PG 4437 152/3

ASSESSOR'S MAP 74

Code .. - Nos. 2-000



Scale: 1" = 100'

- PH. 4043 138/48
- PH. 4238 145/88
- PH. 4497 152/73
- PH. 5274 176/14

Revised: 08-08-0001

08-08-00

Drawn: 08-08-00

2-000
0-028

1040

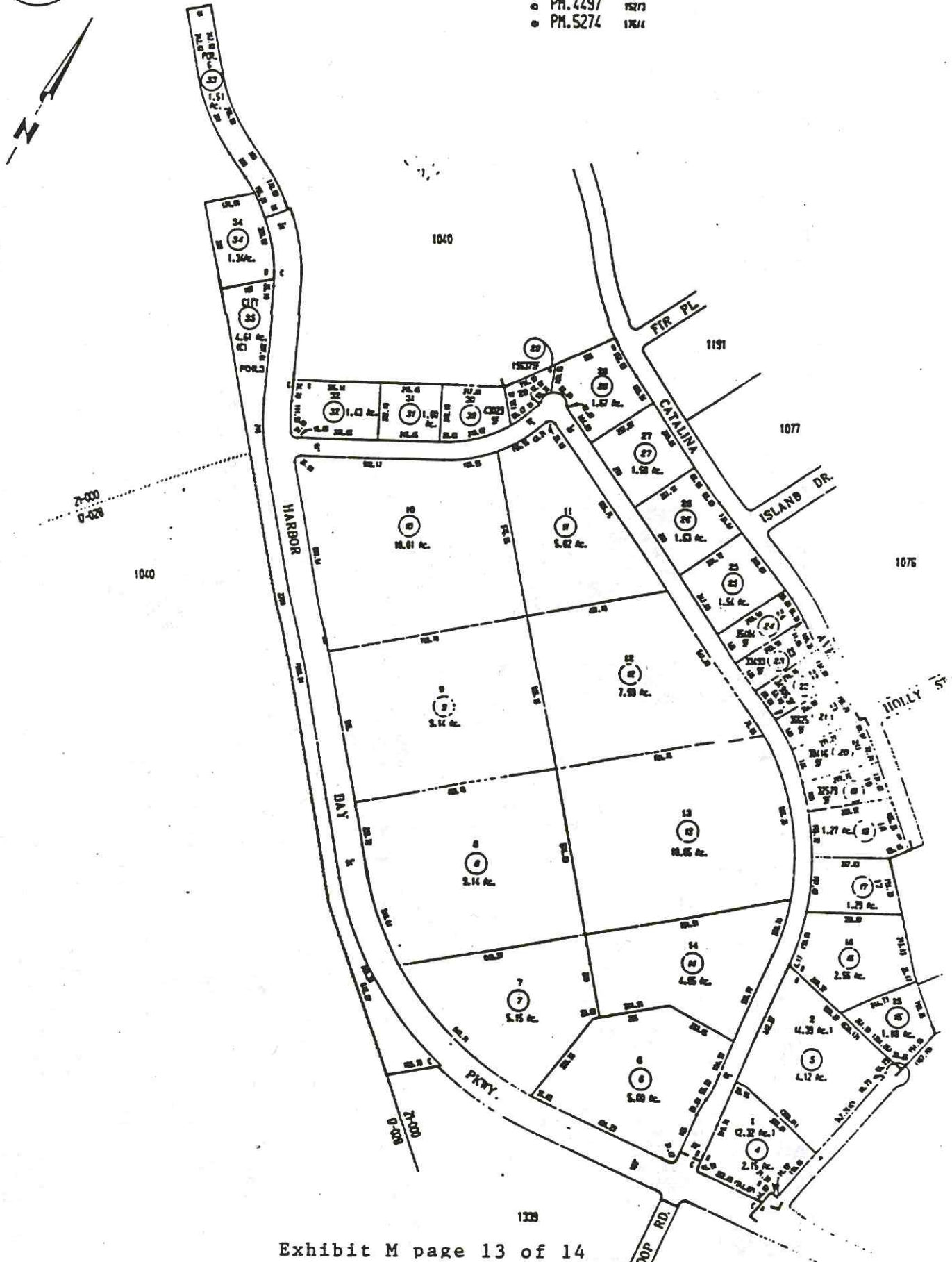
1040

1191

1077

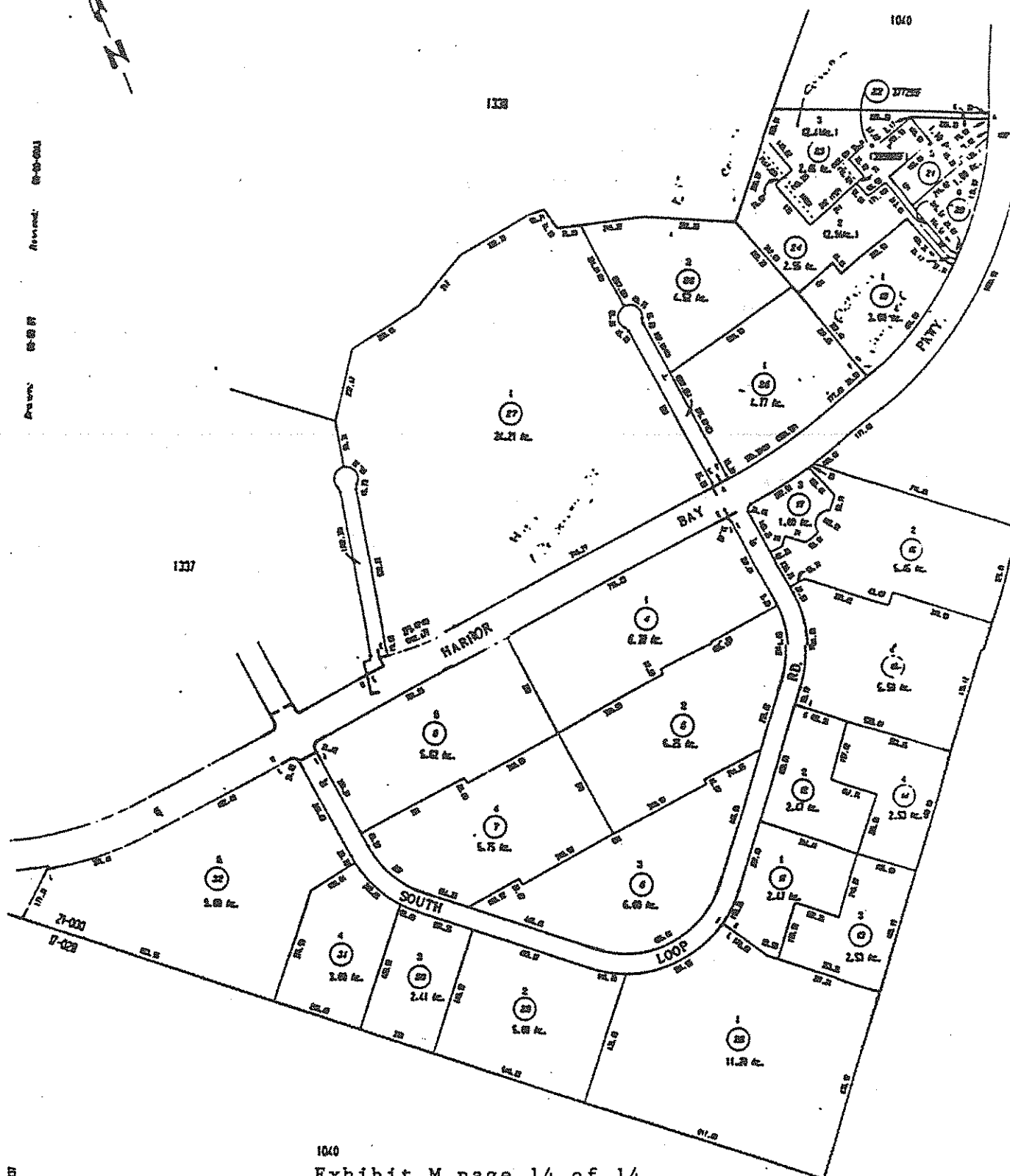
1076

1339



1339

UTAH CONSTRUCTION CO. BAY FARM ISLAND			
PH. 3940	127/72	PH. 4112	141/68
PH. 3954	127/68	PH. 4497	152/3
PH. 4013	128/5	PH. 4507	152/21
PH. 4043	128/48	PH. 4586	154/11
PH. 4124	141/78	PH. 4890	168/28



RESIDENTIAL DEVELOPMENT SCHEDULE

The following table shows the annual development forecast by calendar year for the residential land uses currently approved and proposed.

Residential Dwelling Units per year under construction								
YEAR	VILLAGE IV [1]		Total VILLAGE IV	VILLAGE V - "Neighborhood" [2]				Total VILLAGE V
	Woodbridge	Pelican Bay		"A"	"B"	"C"	"D"	
1989	72	44	116	24	55	60	35	174
1990	0	0	0	40	50	85	93	268
1991	0	0	0	24	50	62		136
1992	0	0	0	0	53	0		53
	72	44	116	88	208	207	128	631

[1] Currently approved

[2] Per Proposed Vesting Tentative Map for Tract 5905

Any units not built in the designated year
may be accumulated and built in a
subsequent year.

NON-RESIDENTIAL DEVELOPMENT SCHEDULE

The following table show the annual development forecast by calendar year for the non-residential land uses currently approved for Harbor Bay Business Park.

Non-Residential Acres Per Year Under Construction		
<u>Year</u>	<u>HBBP</u>	<u>Other</u>
Prior Years Total	131.7	
1989	20.0	Plus Community Site and Church Site at Harbor Bay Landing
1990	20.0	
1991	20.0	
1992	20.0	
1993	20.0	
1994	20.0	
1995	20.0	
1996	20.0	
1997	20.0	
1998	<u>2.3</u>	
	314.0	

Any acreage not developed in the designated year may be accumulated and developed in a subsequent year

