

Recording Requested By:
City of Alameda

When recorded, return to:
City of Alameda
Public Works Department
Scott Wikstrom, City Engineer
950 West Mall Square, Room 110
Alameda, CA 94501

Parcel Map 11038, Alameda Landing Waterfront

Document Exempt from Recording Fee: Government Code Section 6103

SUBDIVISION IMPROVEMENT AGREEMENT

This Subdivision Improvement Agreement ("**Agreement**") dated as of this ____ day of _____, 2020 ("**Effective Date**") is entered into by and between the City of Alameda, a municipal corporation in the County of Alameda, State of California ("**City**"), and Catellus Alameda Development, LLC a Delaware limited liability company ("**Developer**"), with reference to the following facts and circumstances:

RECITALS

A. WHEREAS, Developer (as successor-in-interest to Palmtree Acquisition Corporation, a Delaware corporation ("**PAC**")) and the City (as successor-in-interest to Community Improvement Commission of the City of Alameda, a public body corporate and politic (the "**CIC**")) have entered into that certain Disposition and Development Agreement (Alameda Landing Mixed Use Project), dated as of December 5, 2006, and recorded in the Official Records of Alameda County, California ("**Official Records**") on July 24, 2007, as Series No. 2007275740; (i) as amended by (A) that certain First Amendment to Disposition and Development Agreement (Alameda Landing Mixed Use Project), dated as of December 4, 2007 and recorded in the Official Records on December 20, 2007, as Series No. 2007427558, and (B) that certain Second Amendment to Disposition and Development Agreement (Alameda Landing Mixed Use Project), dated as of June 4, 2008 and recorded in the Official Records on August 5, 2008, as Series No. 2008236638; (ii) as assigned by that certain Assignment and Assumption Agreement (Disposition and Development Agreement (Alameda Landing Mixed Use Project)) and Right of Entry for Preliminary Work (Alameda Landing – Testing/Investigation)) by and between PAC, as assignor, and Developer, as assignee, effective as of February 28, 2011, and recorded in the Official Records on June 10, 2011, as Instrument No. 2011168602; (iii) as partially assigned by that certain Partial Assignment and Assumption Agreement (Disposition and Development Agreement (Alameda Landing Mixed Use Project) – Portion of Parcel 2) by and between Developer, as assignor, and Target Corporation, a Minnesota corporation, as assignee, dated as of July 18, 2012, and recorded in the Official Records on September 10, 2012, as Instrument No. 2012295654; (iv) as partially assigned by that certain Partial Assignment and

Assumption Agreement (Disposition and Development Agreement (Alameda Landing Mixed Use Project) – Remaining Portion of Parcel 2) by and between Developer, as assignor, and Catellus Alameda Retail, LLC, a Delaware limited liability company, as assignee, recorded in the Official Records on December 12, 2013, as Instrument No. 2013381981; (v) as partially assigned by that certain Partial Assignment and Assumption Agreement (Disposition and Development Agreement (Alameda Landing Mixed Use Project) – Residential Parcel 1) by and between Developer, as assignor, and TRI Pointe Homes, Inc., a Delaware corporation, as assignee, dated as of December 18, 2013, and recorded in the Official Records on December 18, 2013, as Instrument No. 2013387026); (vi) as partially assigned by that certain Partial Assignment and Assumption Agreement (Disposition and Development Agreement (Alameda Landing Mixed Use Project) – Residential Parcel 2) by and between Developer, as assignor, and TRI Pointe Homes, Inc., a Delaware corporation, as assignee, dated as of December 11, 2014, and recorded in the Official Records on December 11, 2014, as Instrument No. 2014-302877; (vii) as partially assigned by that certain Partial Assignment and Assumption Agreement (Disposition and Development Agreement (Alameda Landing Mixed Use Project) – Residential Parcel 3) by and between Developer, as assignor, and TRI Pointe Homes, Inc., a Delaware corporation, as assignee, dated as of December 18, 2015, and recorded in the Official Records on December 18, 2015, as Instrument No. 2015-331814; (viii) as partially assigned by that certain Partial Assignment and Assumption Agreement (Disposition and Development Agreement (Alameda Landing Mixed Use Project) – Waterfront) by and between Developer, as assignor, and FISC Properties LLC, a California limited liability company, as assignee, dated as of December 15, 2017, and recorded in the Official Records on December 18, 2017, as Instrument No. 2017-277609; and (ix) as refined and clarified by certain operating memorandums, whereby, among other things, Developer has agreed to acquire, and the City has agreed to sell, the Land (collectively, the “**DDA**”); and

B. The City and PAC also entered into (1) that certain Development Agreement (Alameda Landing Mixed Use Residential Project), dated as of January 2, 2007 (as may have been amended and partially assigned from time to time, the “**Residential DA**”), and (2) that certain Development Agreement (Alameda Landing Mixed Use Commercial Project), dated as of January 16, 2007 (as may have been amended and partially assigned from time to time, the “**Commercial DA**”). The Residential DA and Commercial DA are sometimes referred to herein jointly as the “**DAs**”; and

C. Pursuant to the DDA, the City in its capacity as successor agency to the CIC shall convey to Developer a portion of the Property lying in the City of Alameda, County of Alameda, State of California, known as Parcel Map No. 11038, hereinafter called “**Subdivision**”; and more particularly described in Exhibit “A” attached hereto; and

D. On January 27, 2020, the City Planning Board held a duly noticed public hearing and recommended approval of Parcel Map No. 11038 with conditions which are on file in the Public Works Department and incorporated herein by this reference; and

E. Developer has presented a proposed Parcel Map to City, identified as Parcel Map No. 11038. The Parcel Map of the Subdivision has been reviewed by the City’s Public Works and Planning Directors and found to be in substantial compliance with the Final Development Plan approved by the Planning Board on October 14, 2019 by resolution PB-19-21; and

F. Construction of the required Public Infrastructure Improvements, however, has not commenced nor have such improvements been accepted by City. In accordance with the Subdivision Map Act (Government Code Section 66410, et seq.) ("**Map Act**") and Chapter 30 of the Alameda Municipal Code and in consideration of the approval of the proposed Parcel Map and acceptance of the irrevocable offers of dedication of public right-of-way easements and acceptance of the permanent maintenance of the required Public Infrastructure Improvements, the parties desire to establish an agreement binding Developer to complete the required improvements pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the forgoing, which are incorporated herein by reference, the mutual covenants, promises and agreements herein contained, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually agree as follows:

1. Approval of Parcel Map No. 11038 by City shall be conditioned upon the recordation of this Agreement with the Alameda County Recorder.

2. Construction Obligation:

a. Developer agrees at Developer's sole cost and expense to cause all required off-site and on-site Public Infrastructure Improvements identified in the conditions to the approval of the Subdivision and shown on approved Improvement Plans (the "**Work**") to be prepared and completed to the City's satisfaction within two (2) years from the Effective Date of this Agreement, subject to delays due to Force Majeure Events (as defined in Section 20 below) and extreme weather events as described in Section 21 below. A copy of such conditions and Improvement Plans is on file in the Public Works Department.

b. Except for delays due to Force Majeure Events and extreme weather events, which may extend the time for performance under this Agreement as further described in Sections 20 and 21, no extension of time shall be made, except upon the basis of a written application made by Developer to the Public Works Director, stating fully the grounds of the application and facts relied upon for such an extension. Any extension may be conditioned upon an increase in security and inspection fees to reflect current costs. Neither such extension nor other delay by City shall constitute a waiver of any of the obligations of Developer or Developer's surety. Any extensions so granted shall not relieve the surety's liability on any of the bonds required by this Agreement. In the event an extension is granted, Developer agrees to promptly extend the term of all surety bonds or other surety acceptable to City. All such bonds and/or other surety are subject to review and approval (not to be unreasonably withheld, conditioned, or delayed) by the City Attorney for legal sufficiency, and if no bonds or other surety acceptable to the City Attorney are provided to secure Developer's performance, the extension shall be void.

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

4. Performance of the Work: Construction of the Work shall commence within a reasonable time. Developer agrees to perform the Work in a workmanlike and professional manner, in accordance with all requirements of State and local law, including the Alameda Municipal Code, Public Works Standard Specifications, or any subsequent revisions thereof, and according to the plans and specifications approved by the Public Works Director, prepared by BKF Engineers entitled "Fifth Street Extension" filed in the office of the Public Works Director. Developer agrees that all details and notes shown on the Improvement Plans shall be made a part of the improvements.

5. Modifications: Developer reserves the right to modify such plans and specifications as the development progresses should unforeseen conditions occur, provided advance written approval is obtained from the Public Works Director. City also reserves the right to make or require reasonable modifications to the plans and specifications whenever field conditions and/or public safety require such modifications. Developer shall pay City for all costs including, without limitation, plan check and inspection costs resulting from any such modifications. Developer shall provide personal supervision of the Work or have a competent contractor, foreman or superintendent on the Work at all times during work progress with authority to act for Developer.

6. Compliance and Inspection: All development activity shall be in compliance with conditions of approval of the Subdivision and measures imposed to mitigate adverse environmental effects of the project including any monitoring program(s). All improvements shall be inspected by City for strict compliance with City permits, standards, plans, specifications, performance criteria and Subdivision regulations. Concurrent with the execution of this Agreement, Developer shall pay to City a deposit to cover ongoing Public Works plan check and inspection costs in accordance with the current City of Alameda Master Fee Schedule.

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

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

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

10. Developer Responsibility for Work: Until such time as the improvements are accepted by City, Developer shall be responsible for, and bear the risk of loss to, any of the improvements constructed or installed. Until such time as all improvements required by this agreement are fully completed, passed final inspection and, if to be dedicated to City, are actually dedicated and accepted by City, Developer will be responsible for the care, maintenance

of, and any repairs or reconstruction to remedy any damage to such improvements. City shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the Work specified in this Agreement prior to the completion and acceptance of the Work, except to the extent resulting from the gross negligence or willful misconduct of the City or any City Party (as defined in Section 22.c.).

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

12. Sale or Disposition of Subdivision: This Agreement runs with and encumbers the Subdivision, and the sale or other disposition of the property will not relieve such parties from the obligations set forth herein. If the property or any portion of the property within the Subdivision is sold to any other person, Developer may request from City a novation of this Agreement and a substitution of security. Upon approval of the novation and substitution of securities from City, which approval shall not be unreasonably withheld, conditioned, or delayed, Developer may obtain a release or reduction of the securities required by this Agreement. Nothing in the novation shall relieve Developer of the obligations under this Agreement for the Work done by or on behalf of Developer. Developer shall give written notice to City within ten (10) days after close of escrow of any sale or transfer of all or any portion of subject property and any assignment of this Agreement, specifying the name or names of the assignee, the Assignee's mailing address, the amount and location of the land sold or transferred, evidence of the express assumption of the obligations hereunder, and the name and address of a single person or entity to whom any notice relating to this Agreement shall be given.

13. Improvement Security:

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

(1) Faithful performance security in the sum of \$2,511,470 to cover all costs of public and private improvements, which is equivalent to one hundred percent (100%) of the approved estimate for the cost of improvement.

(2) Labor and materials security in the sum of \$2,511,470 to ensure payment in full of all persons, firms and corporations who perform labor or furnish materials for work done on said public and private improvements, which is equivalent to one hundred percent (100%) of the approved estimate for the costs of labor and materials.

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

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

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

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

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

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

16. Acceptance of Improvements: No improvement shall be accepted by City unless and until it is free of all liens and encumbrances (other than Permitted Exceptions as defined in Section 5.3(a) of the DDA and encumbrances created by or on behalf of the City), free of all material defects and conditions which may create a hazard to the public health, safety or welfare and until Developer has set and established survey monuments in accordance with the Parcel Map and to the satisfaction of the Public Works Director. Upon completion of final inspection of the improvements described herein, Developer shall comply with Section 8180 of the Civil Code and shall immediately deliver to the Public Works Director a copy of the notice of completion required by said section bearing certification of recordation by the County Recorder. In addition, all properties, rights-of-ways, easements and other interests to be dedicated to City shall be, before acceptance thereof by City, free and clear of all liens and encumbrances of any kind or character whatsoever (other than Permitted Exceptions and encumbrances created by or on behalf of the City) and free of any and all material defects and conditions creating a hazard to public health or public safety.

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

Concurrent with acceptance of Subdivision improvements, Developer shall provide a warranty security equivalent to 10% of the improvement security for the guarantee and warranty of the work for a period of one year following the completion and acceptance thereof against any defective work or labor done, or defective materials furnished, subject to the limitations of Section 66499.9 of the Map Act.

18. Exoneration of Surety: Subject to Section 12 above, City shall not be required to exonerate any surety, release any security relating to satisfactory completion of the improvements or issue occupancy permits until acceptance of proposed public improvements by City or, in the case of improvements which will not be dedicated to and accepted by City, until the improvements have passed final inspection by City. In addition, release of security, exoneration of sureties and issuance of occupancy permits will be predicated upon the receipt of required maintenance and/or warranty agreements and security therefore, as well as payment of all outstanding fees, penalties, accrued interest, and reimbursements due City.

19. Building Permit Requirements: Prior to issuance of any building permit, Developer shall comply with all conditions precedent to issuance, including without limitation, the Uniform Fire Code requirements relating to access and water supply. Developer shall also pay the applicable Property Development Excise Tax, as well as all required fees. No building permit shall be issued until all of the tract improvements are constructed and accepted by the City Engineer, except as otherwise permitted by the Map Act and as approved by the City Engineer. The subdivider shall pay all applicable impact fees and all other fees due to the City and related to the Parcel Map and associated improvements.

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

In addition to specific provisions of this Agreement, performance by either party shall not be deemed to be in default where delays or defaults are for reasons beyond the commercially reasonable control of such party due to war; insurrection or acts of civil disobedience; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; the pendency of any mediation, arbitration, litigation or other administrative or judicial proceeding affecting the subject property or a party's ability to perform its obligations under this Agreement (excluding financial inability); inability to secure necessary labor, materials or tools; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City shall not excuse performance by the City) or any

other causes beyond the commercially reasonable control or without the fault of the party claiming an extension of time to perform which substantially interferes with such party's performance under this Agreement (collectively, "**Force Majeure Events**"). An extension of time for any such cause shall only be for the period of the Force Majeure Event, which period shall commence to run from the time of the commencement of the Force Majeure Event. A party claiming an extension due to a Force Majeure Event shall notify the other party in writing within thirty (30) days after commencement of the Force Majeure Event. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) days after the commencement of the Force Majeure Event, then, unless otherwise agreed by the parties, the extension period shall commence to run only thirty (30) days prior to the giving of such notice.

21. Weather Delays. Developer shall not be deemed to be in breach of this Agreement if the cause of a delay in the time for performance is caused by extreme weather conditions that prevent the Work from being performed pursuant to the Agreement. Such delay shall be evidenced by actual weather and rainfall surveys and such delayed components of the Work must be shown to be critical path items in the completion of the Work. If Developer claims an extension due to extreme weather conditions Developer shall notify City in writing within thirty (30) days after the commencement of such extreme weather conditions. If, however, notice by Developer is sent to City more than thirty (30) days after the commencement of such extreme weather conditions, then, unless otherwise agreed by the parties, the extension period shall commence to run only thirty (30) days prior to the giving of such notice.

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

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

b. Developer, the surety and any person, firm, partnership, entity, corporation, or association claiming any interest in the real property described in this Agreement and each of them shall totally reimburse City for its reasonable costs and expenses (including reasonable attorneys' fees and costs), including interest thereon at the maximum rate allowed by law, from the date of notification of such cost and expense until paid. Such obligation for reimbursement shall not be limited by the amount of the estimates set forth or by such security as may have been provided to City in connection with this Agreement. Such amounts and interest accrued thereon shall constitute a lien on the Subdivision property.

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

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

23. Indemnity/Hold Harmless:

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

b. To the maximum extent permitted by law, Developer shall hold harmless, defend and indemnify City, its City Council, boards, commissions, officials, employees, and volunteers (collectively, "**Indemnitees**") from and against any claim, action or proceeding against City, its City Council, boards, commissions, officials, employees, and volunteers to attack, set aside, void or annul an approval of City concerning the Subdivision property or any portion thereof, which action is brought within the time period provided for in Government Code Section 66499.37. City shall promptly notify Developer of any claim, action or proceeding and City shall cooperate fully in the defense. If City fails to promptly notify Developer of any claim, action or proceeding or if City fails to cooperate in the defense, then thereafter, Developer shall not be responsible to defend, indemnify or hold harmless City.

c. Developer further agrees that it will hold harmless, defend and indemnify the Indemnitees from and against any and all loss, liability, expense, claim, lawsuit, costs (including costs of defense and attorneys' fees) and damages of every kind caused to any person or to the property of any person which may occur on any portion of the property then owned by Developer and caused by any acts or omissions of Developer or its agents, servants, employees or contractors in the performance of its duties under this Agreement. The foregoing indemnity shall exclude any indemnified matters to the extent they result from (x) the gross negligence or willful misconduct of the City or its boards, commissions, councils, departments including the electric utility Alameda Municipal Power, officers, employees, and agents (collectively, "**City Parties**"); or (y) the mere discovery by Developer or its agents of any preexisting condition of Hazardous Materials in, on, under or about the Subdivision, so long as Developer or its agents or employees in no way exacerbate such pre-existing condition of Hazardous Materials.

24. Insurance: Without limiting Developer's indemnification provided herein, Developer shall procure and maintain at all times during the life of this Agreement the following policies of insurance with insurers (if other than the State Compensation Fund) with a current A.M. Best's rating of no less than A:VII, or its equivalent, against injury to persons or damage to property which may arise from or in connection with the performance of work hereunder by Developer, its agents, employees or subcontractors:

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

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

(2) Liability: Commercial general liability coverage in the following minimum limits:

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

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

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

Bodily injury:	\$1,000,000 each occurrence
Property Damage:	\$1,000,000 each occurrence

or

Combined Single Limit:	\$2,000,000 each occurrence
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The amount of any deductible or self-insured retention over \$5,000 shall be declared to and security posted guaranteeing payment of losses and defense costs.

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

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

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

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

f. Primary Coverage: For claims related to this project, Developer's insurance is primary coverage to City insurance and any insurance or self-insurance programs maintained by City is excess to Developer's insurance and will not be called upon to contribute with it.

g. Failure or Breach by Developer: Any failure by a party to comply with reporting or other provisions of this Agreement, including breach of warranties, shall not affect coverage provided to City, its officers, employees and agents.

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

i. Contractor's Insurance: Before construction begins, Developer shall provide City with a letter stating its general contractor ("**Contractor**") for the project in the Subdivision. Work on the project may then begin and continue as long as that Contractor is engaged as the Contractor on the job. No other Contractor may be substituted unless and until a letter naming the new general contractor is provided to City along with the necessary evidence of all required insurance. Developer shall cause the Contractor and all subcontractors to provide the following insurance coverages:

(1) On or before the commencement of the agreement between the Developer and Contractor, Contractor shall furnish City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with paragraphs below. Such certificates, which do not limit Contractor's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance

written notice to City by certified mail, Attention: Risk Manager.” Contractor shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming City, its City Council, boards, commissions, officials, employees and volunteers as additional insured shall be submitted with the insurance certificates.

- Contractor shall maintain the following insurance coverage:
 - Workers’ Compensation: Statutory coverage as required by the State of California.
 - Liability: Commercial general liability coverage in the following minimum limits:

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

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

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

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

Bodily injury: \$1,000,000 each occurrence
Property Damage: \$1,000,000 each occurrence

or

Combined Single Limit: \$2,000,000 each occurrence

- Pollution Prevention: Legal liability required for hazardous materials excavation in the amount of 2,000,000 each occurrence.
- Builders Risk: In the amount of \$1,000,000. If work involves explosives, underground or collapse risks, XCU must be included.

(2) Subrogation Waiver: Contractor agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Contractor shall look solely to its insurance for recovery. Contractor hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Contractor or City with respect to the services of Contractor herein, a waiver

of any right to subrogation which any such insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance.

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

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

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

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

City: City of Alameda
City Attorney's Office
City Attorney
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501
510-747-4750

With copy to: City of Alameda
Public Works Department
City Engineer
950 W. Mall Square, Room 110
Alameda, CA 94501
510-747-7900

Developer: Catellus Alameda Development, LLC
William Hosler, EVP
66 Franklin Street, Suite 200
Oakland, CA 94607
510-267-3401

26. Attorney's Fees; Etc.: In the event any party to this Agreement brings an action to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorney's fees from the other party, whether or not such action or proceeding is prosecuted to judgment. This provision shall be in addition to any provisions regarding attorney's fees set forth in the bonds securing this Agreement. This Agreement shall be construed and interpreted according to California law, and any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Alameda.

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

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

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

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

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

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

33. Conflict with DDA and DAs. Notwithstanding anything in this Agreement to the contrary, to the extent that any of the terms and conditions of this Agreement conflict with the terms and conditions of the DDA or the DAs, the applicable terms and conditions of the DDA or DAs shall control.

34. Counterparts: This Agreement may be executed in any number of counterparts (including by fax, PDF or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

35. Agreement runs with the real property: This Agreement pertains to and runs with the real property included within Parcel Map 11038 which land is expressly agreed to benefit from the privileges granted to Developer under this Agreement, and binds the beneficiaries, heirs, assigns, successors in interest of Developer.

[signatures on following page]

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

Catellus Alameda Development, LLC,
a Delaware limited liability company

By: [Signature]

Name: C.W. HOLER

Its: EVP

CITY OF ALAMEDA
a municipal corporation

Eric J. Levitt
City Manager

RECOMMENDED FOR APPROVAL:

Scott Wikstrom
City Engineer

APPROVED AS TO FORM:

Celena H. Chen or Lisa Nelson Maxwell
Assistant City Attorney

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

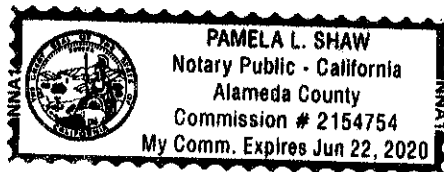
On February 26, 2020 before me, Pamela L. Shaw, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature *Pamela L. Shaw* (Seal)



CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and only the truthfulness, accuracy, or validity of that document

State of California
County of Alameda

On _____, 20____, before me _____, Notary

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)
Notary Public