Recording requested by:

City of Brisbane

When recorded, mail to:

City Clerk
City of Brisbane
50 Park Place
Brisbane, CA 94005

Exempt from recording fee: Government Code, sections 6103, 27383

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR ASSESSOR'S PARCEL NUMBER 007-165-020 (OPUS OFFICE CENTER PROJECT)

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the "First Amendment") is entered into this _____ day of _____, 2017 between the City of Brisbane, a municipal corporation ("City") and Sierra Point, LLC, a Delaware limited liability company ("Developer").

RECITALS

A. On June 12, 2012 City and Developer entered into a Development Agreement ("the Agreement") concerning the property identified as San Mateo County Assessor's Parcel No. 007-165-020, consisting of approximately 8.87 +/- acres and commonly known as 3000-3500 Marina Boulevard, Brisbane, California, more particularly described in Exhibit A attached hereto and made a part hereof ("the Property").

B. The Agreement was recorded on February 4, 2013, in the Official Records of San Mateo County, Instrument No. 2013-018557.

C. City and Developer now wish to amend the Agreement as provided herein.

D. The Successor Agency of the Redevelopment Agency of the City of Brisbane ("Successor Agency") owns certain undeveloped property located at the eastern end of Sierra Point Parkway, commonly known as 400 Sierra Point Parkway in the City, consisting of approximately 3.4 +/- acres and identified as a portion of San Mateo County Assessor's Parcel No.007-165-060 ("the Leased Property"). City and Developer's predecessor in interest previously entered into a Ground Lease Agreement, dated March 29, 1984 and recorded March 29, 1984 for the lease of the Leased Property by City to Developer's predecessor in interest .

E. City has prepared an *Addendum to the Opus Office Center Initial Study/Mitigated Negative Declaration* dated December 2016 ("Addendum") to the Opus Office Center Initial Study/Mitigated Negative Declaration ("2008 IS/MND") which was adopted by the City in

December 2008. The Addendum concludes that the proposed revisions to the Agreement and the Opus Office Center project (the "Project") which are the subject of this First Amendment (1) would not cause new significant environmental effects not identified in the 2008 IS/MND, and (2) would not cause environmental effects to be more substantially more severe than those identified in the 2008 IS/MND, and no substantive changes have occurred with respect to current circumstances under which the Project would be undertaken that would cause new or substantially more severe significant environmental effects than were identified in the 2008 IS/MND, nor has new information become available that shows that the Project would cause new or substantially more severe environmental effects which have not already been analyzed in the 2008 IS/MND.

F. As provided by law, on January 12, 2017, the Planning Commission of the City conducted a public hearing on the proposed amendment to the Agreement adopted Resolution No. _____ recommending the Brisbane City Council approve the First Amendment.

G. As provided by law, on February 2, 2017, the City Council of the City conducted a public hearing on the First Amendment, accepted the findings and recommendations of the Planning Commission, determined the First Amendment was consistent with the General Plan and introduced Ordinance No. _____ to adopt the First Amendment to the Agreement.

H. On _____, 2017, the City Council adopted Ordinance No. _____ adopting the First Amendment to the Agreement. Ordinance No. _____ became effective _____, 2017.

Now, therefore, in consideration of the mutual covenants contained in this First Amendment, City and Developer agree as follows:

Section 1. Unless otherwise provided herein, the Definitions used in the Agreement shall have the same meanings as used in this First Amendment.

Section 2. Section 2.2 of the Agreement (Land Use Term) is amended to read as follows:

"2.2 Land Use Term. The term of the Agreement, as amended, shall commence on the effective date of Ordinance No. _____ (as set forth in Recital H) and shall expire 10 years thereafter, on May 6, 2027, subject to Sections 6 and 8.2 of the Agreement, unless sooner terminated or extended as hereinafter provided. Notwithstanding any provisions to the contrary that may be contained in City's Subdivision or Zoning Ordinances, the Project Approvals shall remain in full force and effect during the Land Use Term of this Agreement, as amended, and any extensions thereof."

Section 3. Section 4.1 of the Agreement (Applicable Ordinances and Approvals) is hereby amended by adding thereto a new subsection (d) to read as follows.

"4.1 Applicable Ordinances and Approvals. Developer shall have the right to proceed with development of the Project in compliance with Applicable Law, subject to the following:

(Subsections (a), (b) and (c), no change.)

(d) Notwithstanding anything in this Agreement to the contrary, City determines that the permitted uses in the Research and Development category of the SP-CRO Sierra Point Commercial District, as generally described in Chapters 17.02 and 17.18 of the Brisbane Municipal Code include, but are not limited to, the following uses and facilities:

(i) A use primarily engaged in the study, testing, engineering, design, analysis of experimental products, processes or services related to current or new technologies. Research and development of uses may include manufacturing, fabricating, processing or storing products, materials or similar related activities where such activities are accessory to research, development or evaluation. Related administrative uses such as finance, marketing, sales, accounting, purchasing or corporate offices; providing services to others on- or off-site; and related educational uses may also be included provided they remain accessory to the primary uses of "research and development" , and are consistent with any limitations on accessory uses for the SP-CRO Sierra Point Commercial District. Typical "research and development" uses may include, but are not limited to, computer software and hardware firms, electronic research firms, biotechnical firms, clean technology firms and pharmaceutical research laboratories.

(ii) A use for which research and development components require substantial laboratory space and/or equipment for testing or development, which may also include associated adjacent or nearby work stations for recording or preparing written documentation of research. Typical laboratory research and development uses may include, but are not limited to, biotechnical firms and pharmaceutical research laboratories.

(iii) A use for which the research and development components primarily occur in an office setting, with minimal laboratory area or research equipment, other than computers and other related electronic equipment. Typical office type research and development uses may include, but are not limited to, computer software and computer simulation firms.

(iv) Any use otherwise determined by the City's Community Development Director to be a permitted use under the research and development category.

The prohibition of research and development including the use of live dogs, cats or nonhuman primates set forth ins Section 17.18.020 K of the Brisbane Municipal Code in not affected by this Section 4.1 (d), nor is the requirement for compliance with conditions imposed by the Fire Marshal or Building Official on building permit applications and building design. As to the uses described in this Section 4.1 (d), the Developer shall not be required to apply for a conditional use permit for such use unless, following a risk assessment under Section 17.18.045 of the Brisbane Municipal Code (as said Section may be amended) or following an evaluation by the Fire Marshal or Building Official, there is a recommendation that certain conditions of approval are necessary to protect the public health, safety and welfare and those conditions are not otherwise included in any of the Codes, standards or regulations applicable to such use. The City and the Developer recognize that the likelihood of such conditions not being included in the Codes, standards or regulations applicable to such uses is not substantial. Prior to submitting an application for a Subsequent Project Approval, a Developer may submit a Risk Assessment Questionnaire in order for the City to conduct a risk analysis and the for the Fire Marshal and Building Official to evaluate the risks. Thirty days from the date the City has received the completed Risk Assessment Questionnaire and any other information from the Developer the City needs to conduct the risk analysis and undertake and evaluation of the risk, the City will advise, based on the completed Questionnaire and other information it has received, the Developer whether the Developer needs to apply for a conditional use permit. If the City fails to advise the Developer within 30 days of its receipt of a fully completed Questionnaire (and any other information that the City has requested) whether the Developer needs to apply for a conditional use permit, the Developer shall not be required to apply for such permit. ”

Section 4. Within 10 days of the effective date of Ordinance _____, Developer shall (a) by separate instrument quitclaim or otherwise terminate all of its interest in the Leased Property to the Successor Agency and (b) pay to City $300,000, which payment will be used for site preparation of that portion of the Leased Property to be developed for public purposes.

Section 5. Each time the City issues a building permit for development of the Property, the Developer shall pay to City $.50 times the square footage of the building (other than the parking structure) for which the City has issued such building permit , which payment will also be used toward developing for public purposes the Leased Property. The $.50/square foot will be adjusted each January 1 to reflect the change in the Engineering Cost Index.

Section 6. Developer shall install on the top floor of the parking structure that it constructs on the Property a solar panel system sufficient to provide electrical energy to help meet the electrical energy needs of the Project. This Section 6 supersedes and replaces Condition of Approval V of the Project Approvals.

Section 7. In all other respects, the terms and conditions of the Agreement shall continue in full force and effect.

In witness whereof, City and Developer have executed this First Amendment on the date set forth above.

City of Brisbane

_____
Mayor

Sierra Point, LLC

BY:_____
Its _____

Attest:

_____
City Clerk

Approved as to form:

_____
City Attorney

2013-018557
10:49 am 02/04/13 AG Fee: NO FEE
Count of Pages 25
Recorded in Official Records
County of San Mateo
Mark Church
Assessor-County Clerk-Recorder
* R 0 0 0 1 5 9 1 9 0 7 *

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City of Brisbane

WHEN RECORDED, RETURN TO:
City Clerk
City of Brisbane
50 Park Place
Brisbane, CA 94005

Space above this line for Recorder's use only

Exempt from FEE - Government Code Section 6103/27383. For benefit of the City

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT, dated June 4th, 2012 pursuant to Section 2.1 of this Agreement, is entered into by and between the CITY OF BRISBANE, a municipal corporation ("**City**"), and SIERRA POINT, L.L.C., a Delaware limited liability company ("**Developer**") pursuant to Sections 65864 *et seq.* of the California Government Code and City's police powers. City and Developer are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS:

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties:

A. The Brisbane City Council has adopted Resolution No. 88-10 establishing procedures and requirements for the consideration of development agreements pursuant to California Government Code Section 65864 *et seq.* (the "**Development Agreement Procedures**").

B. The real property that is the subject of this Agreement consists of approximately 8.9 acres of vacant land located at 3000-3500 Marina Boulevard, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-165-020, and more particularly described in **Exhibit "A"** attached hereto and made a part hereof (**the "Property"** or **"Project Site"**).

C. The Property constitutes a part of the Redevelopment Area commonly known as Sierra Point and is subject to the provisions of the Combined Site and Architectural Design Guidelines (the "**Design Guidelines**"), being a master plan for development of the entire Sierra Point area.

D. On May 4, 2009, the Brisbane City Council adopted Resolution No. 2009-14, granting land use approvals for development of an office project on the Property, consisting of approximately 438,104 square feet of office space in two buildings (8 and 10 stories), a 5-level 1,175 space parking structure, and 211 surface parking spaces, such approvals being

identified as Design Permit DP-5-07, Use Permit UP-3-08, Variance V-1-08, and Tentative Parcel Map TPM-1-08. The configuration of the Project is generally shown on the Site Plan attached hereto as **Exhibit "B"** and made a part hereof.

E. The Tentative Parcel Map was scheduled to expire on or about May 4, 2011, but was automatically extended for an additional two years by the enactment of Government Code Section 66452.22, and is now scheduled to expire on or about May 4, 2013, unless further extended. The Use Permit, Variance and Design Permit were scheduled to expire on May 4, 2011. As a result, Developer applied for extensions of the Design Permit, the Use Permit, and the Variance, such applications being identified as Design Permit DP-2-11, Use Permit UP-7-11 and Variance V-2-11. Following a denial of the extension applications by the Brisbane Planning Commission, Developer filed a timely appeal from this decision to the Brisbane City Council.

F. On July 18, 2011, the Brisbane City Council conducted a hearing on the appeal and following the conclusion thereof, on August 1, 2011, the City Council adopted Resolution 2011-40 granting the appeal and approving an extension of the Design Permit, the Use Permit and the Variance, with certain understandings between the parties. Developer agreed to construct the Project in accordance with LEED Gold standards, and the City Council agreed to negotiate a development agreement with Developer providing for further extension of all the existing and subsequent approvals for a period of time not exceeding ten (10) years from the effective date of such development agreement. This Agreement is the development agreement contemplated by the Parties.

G. Notice of City's intention to consider adoption of this Agreement has been given in accordance with the requirements of California Government Code Section 65867.

H. On December 8, 2011, after consideration of the staff report and all other documentary and oral evidence submitted at a duly noticed public hearing pursuant to the Development Agreement Procedures and state law, the Planning Commission found and determined that this Agreement is consistent with the objectives, policies, land uses and programs specified in the Brisbane General Plan, is compatible with the uses authorized in and the regulations prescribed for the Sierra Point Commercial District; is in conformity with and will promote public convenience, general welfare and good land use practices; will not adversely affect the orderly development of property or the preservation of property values within the City and will promote the same; and will promote and encourage the development of the Project by providing a greater degree of requisite certainty with respect thereto. The Planning Commission thereupon adopted Resolution No. DA-1-11, recommending to the City Council that Ordinance No. 568 approving this Development Agreement be adopted.

I. On January 17, 2012, the City Council held duly noticed public hearing on this Agreement, and following the conclusion thereof, the City Council accepted the findings and recommendations of the Planning Commission and determined that this Agreement is consistent with the General Plan. Accordingly, on January 17, 2012, the City Council introduced the Enacting Ordinance and thereafter, on May 5th 2012 the City Council adopted the Enacting Ordinance approving this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

SECTION 1. DEFINITIONS.

As used herein, the following capitalized terms shall have the meanings set forth below, unless the context requires otherwise:

1.1. Agreement means this Development Agreement.

1.2 Applicable Law shall have the meaning set forth in Section 3.1 of this Agreement.

1.3 City means the City of Brisbane

1.4. City Council means the City Council of the City of Brisbane.

1.5 Conditions of Approval shall have the meaning set forth in Section 1.12 of this Agreement.

1.6. Consistent New City Law(s) shall have the meaning set forth in Section 4.1 of this Agreement.

1.7 Construction Standards means the building, mechanical, plumbing, electrical, fire, health, safety, and environmental codes, standards and specifications adopted by the City or otherwise made applicable to construction projects within the City under any federal, state or local statute, ordinance, rule or regulation in effect at any time during the term of this Agreement, including those Construction Standards adopted after the Effective Date of this Agreement. The term "Construction Standards" also includes the most recent version of the LEED Gold standard in effect as of the time Developer submits an application for a building permit to construct any portion of the Project.

1.8. Design Guidelines shall have the meaning set forth in Recital Paragraph C of this Agreement.

1.9. Developer means SIERRA POINT, L.L.C., a Delaware limited liability company and those successors in interest (Transferees, etc.) set forth in Section 7 of this Agreement.

1.10. Development Agreement Procedures shall have the meaning set forth in Recital Paragraph A of this Agreement.

1.11. **Enacting Ordinance** means Ordinance No. 568, adopted by City Council on May 5th 2012, approving this Agreement. This Agreement shall constitute a part of the Enacting Ordinance as if incorporated therein in full.

1.12. **Event of Default** means the failure or unreasonable delay by either party to perform any term, provision or condition of this Agreement as set forth in Section 12.1 of this Agreement.

1.13. **Existing Approvals** for the Project consist of the following (and their Conditions of Approval):

(a) The Mitigated Negative Declaration, including the Water Supply Assessment and the Mitigation Monitoring and Reporting Program;

(b) Tentative Parcel Map TPM-1-08.

(c) Design Permit DP-5-07/DP-2-11.

(d) Use Permit UP-3-08/UP-7-11.

(e) Variance V-1-08/V-2-11.

The Conditions of Approval to the Existing Approvals consist of the Conditions of Approval for Tentative Parcel Map TPM-1-08, attached as Exhibit "A" to Planning Commission Resolution No. TPM-1-08, adopted on February 26, 2009, as ratified and approved by the City Council in Resolution No. 2009-14, adopted on May 4, 2009; and the Conditions of Approval for Design Permit DP-5-07/DP-2-11, Use Permit UP-3-08/UP-7-11 and Variance V-1-08/V-2-11, attached as Exhibit "A" to City Council Resolution No. 2011-11 adopted on August 1, 2011.

1.14. **General Plan** means the General Plan of the City of Brisbane, including text and maps

1.15. **Governing Ordinances** means the Ordinances in effect as of the Effective Date specified in Section 2.1 of this Agreement.

1.16. **Land Use Term** means the term of this Agreement as specified in Section 2.2 below.

1.17. **Laws** means the constitutions and laws of the State of California and the United States and any codes, statutes or executive mandates or any court decision, state, federal or local thereunder.

1.18. **LEED** means Leadership in Energy and Environmental Design.

1.19. **Ordinances** means the ordinances, resolutions, and official policies of the City, governing the permitted uses of land and the density, intensity, rate and timing of

development, including the City's General Plan, Zoning Ordinance, and the Design Guidelines. Ordinances do not include Construction Standards.

1.20. Planning Commission means the Planning Commission of the City of Brisbane.

1.21. Project means the improvements to the Project Site and associated off-site improvements, as generally described in Paragraph D of the Recitals to this Agreement and depicted in the development plans either on file or to be filed by Developer, subject to any modifications or amendments that may be agreed upon by City and Developer pursuant to Section 8 of this Agreement or required or permitted by the Applicable Law.

1.22. Project Approvals refers collectively to the Existing Approvals and the Subsequent Project Approvals (as defined in Section 3.3).

1.23. Property or **Project Site** shall have the meaning set forth in Recital Paragraph B of this Agreement.

1.24. Subsequent Project Approvals means all Project Approvals that may be issued by City after the Effective Date of this Agreement, as defined in Section 3.3.

SECTION 2. EFFECTIVE DATE; LAND USE TERM.

2.1. Effective Date; Recordation. This Agreement shall be dated and the obligations of Developer and City hereunder shall be effective as of June 4th 2012 ("Effective Date"). City and Developer shall execute and acknowledge this Agreement, and thereafter the City Clerk shall cause this Agreement, including all Exhibits hereto, to be recorded in the Official Records of the County of San Mateo, State of California.

2.2. Land Use Term. The term of this Agreement shall commence on the Effective Date and shall expire ten (10) years thereafter, subject to the provisions of Sections 6 and 8.2 of this Agreement, unless sooner terminated or extended as hereinafter provided. Notwithstanding any provisions to the contrary that may be contained in the City's Subdivision or Zoning Ordinances, the Project Approvals shall remain in full force and effect during the Land Use Term of this Agreement and any extensions thereof.

2.3. Extensions Under State Law. In the event any or all of the Project Approvals are extended beyond the term of this Agreement pursuant to any automatic extensions granted by a State Law enacted subsequent to the Effective Date of this Agreement, the extended expiration date provided by State Law shall be controlling.

SECTION 3. GENERAL DEVELOPMENT OF THE PROJECT.

3.1. Vested Right to Develop the Project. Developer shall have the vested right to develop the Project on the Project Site in accordance with the terms and conditions of this Agreement, the Governing Ordinances, the Project Approvals (including their

Conditions of Approval), Consistent New City Law(s) (as defined in Section 4.1 of this Agreement), and the applicable Construction Standards (collectively, the "Applicable Law"). City shall have the right to regulate development and use of the Project Site in accordance with the Applicable Law. The Applicable Law shall control the overall design, development and construction of the Project, all on-site and off-site improvements and the issuance of Subsequent Project Approvals.

3.2 Compliance with LEED Gold Standard. In addition to the renewable energy measures described in Paragraph "U" of the Conditions of Approval, Developer agrees to construct the Project in compliance with the most recent version of the LEED Gold standard in effect as of the time Developer submits the first application for a building permit for any portion of the Project. In all other respects, the development of the Project shall be governed by the City's Green Building Ordinance as set forth in Chapter 15.80 of the Brisbane Municipal Code.

3.3. Subsequent Project Approvals. Developer shall submit applications for any and all Subsequent Project Approvals as necessary to develop the Project, subject to the City's discretionary police powers to issue such Subsequent Project Approvals. Upon submission by Developer of any application and upon the determination by City that such application is complete, City shall promptly commence and diligently complete all steps necessary to review and process the requested Subsequent Project Approvals subject to the Applicable Law and all Laws. Notwithstanding the foregoing, City is not obligated to issue any permit or a Certificate of Occupancy for any portion of the Project unless and until all fees and charges due and payable for that phase have been received by City and all other applicable requirements set forth in the Applicable Law for that phase have been satisfied.

(a) Subsequent Project Approvals contemplated for the Project include:

(1) Any required permits from agencies other than City.

(2) Grading and Building Permits.

(3) Certificates of Occupancy.

(b) The parties acknowledge that development of the Project will require issuance of all Subsequent Project Approvals, including, without limitation, those listed under (a) above. Notwithstanding any other provision in this Agreement, City retains the discretion to formulate conditions of approval for all Subsequent Project Approvals for the Project, as long as such conditions of approval are consistent with the Applicable Law.

3.4. Environmental Review. The environmental review for the Project has been completed.

3.5. Other Governmental Permits. Developer shall apply for such other permits and approvals as may be required by City and other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. Developer will be responsible for

obtaining such other permits and approvals and payment of all costs and expenses that may be incurred in connection therewith. City will cooperate with Developer, at no cost to City, in Developer's efforts to obtain such permits and approvals and City shall, from time to time (at the request of Developer), seek to enter into binding agreements with any such other entity as may be necessary to ensure the timely availability of such permits and approvals to Developer, provided such permits and approvals are mutually determined by City and Developer to be reasonably necessary or desirable, and are consistent with the Applicable Law. In the event that any such permit or approval is not obtained within three (3) months from the date application is deemed complete by the appropriate entity, and such circumstance materially deprives Developer of the ability to proceed with development of the Property or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of Developer or City, Developer and City shall meet and confer with the objective of attempting to mutually agree on alternatives, Subsequent Project Approvals, and/or an amendment to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.6. Liability Insurance and Workers Compensation Insurance. Prior to the commencement of construction (or any work related thereto) upon the Project Site or on any off-site public improvements by Developer or its agents or contractors, Developer shall furnish, or cause to be furnished, to City duplicate originals or appropriate certificates of comprehensive general liability insurance policies in the amount of at least $2,000,000 for any occurrence, naming City, it officials, officers, employees and volunteers as additional insureds. Such insurance policies shall comply with City's "Insurance Requirements For Developers" attached hereto as **Exhibit "C"** and made a part hereof. Developer shall maintain and keep in force such insurance coverage for the term of this Agreement.

Developer shall maintain Workers' Compensation insurance for all persons employed by Developer for work at the site or for work performed pursuant to this Agreement. Developer shall require each contractor and subcontractor similarly to provide Workers' Compensation insurance for its respective employees. Developer agrees to indemnify City for any damage resulting from Developer' failure to maintain any such insurance.

SECTION 4. SPECIFIC CRITERIA APPLICABLE TO DEVELOPMENT OF THE PROJECT.

4.1. Applicable Ordinances and Approvals. Developer shall have the right to proceed with development of the Project in compliance with the Applicable Law, subject to the following:

(a) During the term of this Agreement, City may, in subsequent actions applicable to the Project Site or the Property, apply new or modified Ordinances, resolutions, rules, regulations and official policies that were not in force as of the Effective Date of this Agreement and which are not in conflict with the Applicable Law ("Consistent New City Law(s)"). Such

Consistent New City Law(s) shall be considered to conflict with the Applicable Law if they:

(1) Limit or reduce the density or intensity of all or any part of the Project, or otherwise require any reduction in the square footage or total number of proposed buildings;

(2) Limit the timing, rate of development or phasing of the Project;

(3) Limit the improvements on the Project Site in a manner which is inconsistent with or more restrictive than the limitations included in this Agreement;

(4) Apply to the Project or the Project Site any law, regulation, or rule otherwise allowed by this Agreement which is not uniformly applied on a city-wide basis in a manner which does not discriminate against Developer; or

(5) Impose upon Developer any obligation to construct or to fund the construction of public improvements beyond the obligations imposed by the Applicable Law.

The above list of actions is not intended to be comprehensive, but is illustrative of the types of actions that would conflict with the Applicable Law. Without limiting the foregoing, no moratorium, slow growth, or other limitation affecting use permits, building permits or other land use entitlements, or the rate, timing or sequencing thereof that is inconsistent with the Applicable Law shall apply to the Project or the Project Approvals. Except for the Construction Standards governing construction, building, fire, plumbing, electrical and life safety, no amendment of the Governing Ordinances or new Ordinance, rule, regulation or policy which is inconsistent with the terms of the Governing Ordinances, or which is inconsistent with the Applicable Law, shall apply to the Project or the Project Site.

(b) Notwithstanding anything in this Agreement to the contrary, City may apply the then-current Construction Standards, green building standards (provided such standards do not exceed the requirements of the LEED Gold standard), and other uniform construction codes to any Subsequent Project Approval provided such standards are applied on a city-wide basis in a manner which does not discriminate against Developer. Nothing in this Agreement shall prevent City from denying or conditionally approving any Subsequent Project Approval on the basis of Consistent New City Law(s).

(c) If City believes that it has the right under this Agreement to impose/apply a Consistent New City Law on the Property/Project, it shall send written notice to Developer of that City position ("Notice of New City Law(s)"). Such Notice of New City Law(s) shall contain the following sentence somewhere in its text: "This is a Notice of New City Law(s) provided pursuant to Section 4.1(c)

of the Sierra Point Development Agreement." Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with the Applicable Law, Developer may send written notice to City within twenty (20) days of Developer's receipt of City's Notice of New Law ("Objection to New City Law(s)"). If no Objection to New City Law(s) is received by City within such period of time, Developer shall be deemed to have acknowledged that no conflict exists.

In the event Developer sends a timely notice to City of its Objection to New City Law(s), such notice shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law(s) to the Property. City shall respond to Developer's Objection to New City Law(s) ("City Response") within thirty (30) days of receipt of said Developer Objection to New City Law(s). Thereafter, the Parties shall meet and confer within twenty (20) days of the date of Developer's receipt of the City Response and shall continue to meet over the next thirty (30) days ("Meet and Confer Period") with the objective of arriving at a mutually acceptable solution to this disagreement. The New City Law(s) shall not be applied to the Property until the dispute over the applicability of the New City Law(s) is resolved. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to impose/apply the New City Law(s) to the Property in question, then Developer shall have a period of thirty (30) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 30-day statute of limitations regarding Developer's right to judicial review of the New City Law(s) shall commence upon Developers receipt of City's determination (following the above-described process). If upon conclusion of judicial review of the New City Law(s) (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law(s), such New City Law(s) shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law(s) (e.g., City return fees, return dedications, etc.).

Any of the time limits set forth in this Subsection 4.1(c) may be extended by mutual agreement of the Parties and consistent with good faith and fair and expeditious dealing between the Parties as described in Section 14.1.

4.2. Construction Related Representatives. Representatives of City shall have the reasonable right of access to the Project Site, at normal construction hours during the period of construction for the purposes of this Agreement or any other purpose authorized by any applicable Law, including, but not limited to, the inspection of the work being performed in constructing the improvements.

4.3 Exactions. As a material part of the consideration for this Agreement, Developer shall not be subject to future exactions and other obligations established by the City after the date of this Agreement that otherwise might be imposed on a discretionary basis as conditions to granting land use permits and approvals. Therefore, the Applicable

Law fully sets forth all of Developer's obligations pertaining to the exactions and other obligations for the Project Approvals over which the City has control. Developer's performance of its obligations under this Agreement shall fully satisfy all present and future requirements of City for exactions and other obligations that could be required for the Project Approvals and City shall not require from Developer any additional exactions and other obligations for granting such Project Approvals.

4.4 Subsequently Enacted or Revised Fees, Assessments and Taxes.

(a) **Revised or Newly Adopted Fees.** Any existing application, processing, and inspection fees that are revised during the term of this Agreement, and application, processing and inspection fees that are newly adopted during the term of this Agreement, shall apply to the Project and the Property provided that: (i) such fees have general applicability on a city-wide basis and do not discriminate against Developer; (ii) the application of such fees to the Project and the Property is prospective; and (iii) the application of such fees would not prevent development of the Project in accordance with the Applicable Law.

(b) **Increased or New Taxes.** Except for taxes solely imposed on new development, any subsequently increased or newly enacted city-wide taxes shall apply to the Project and the Property provided that: (i) such taxes have general applicability on a city-wide basis and do not discriminate against Developer; (ii) the application of such taxes to the Project and the Property is prospective; and (iii) the application of such taxes would not prevent development of the Project in accordance with the Applicable Law.

(c) **Assessments.** Nothing in this Agreement shall be construed to relieve the Property from assessments levied against it by the City pursuant to any statutory procedure for the assessment of property to pay for infrastructure and services which benefit the Property.

(d) **Right to Contest.** Nothing in the Agreement shall prevent Developer from paying any fee, tax or assessment under protest, or otherwise asserting its legal rights to protest or contest any fee, tax or assessment charged or levied against the Project or the Property.

SECTION 5. PERIODIC REVIEW OF COMPLIANCE.

5.1. Annual Review.

(a) **Review Date.** The annual review date for this Agreement shall be on the first day of the month following the anniversary of the Effective Date, or as reasonably soon thereafter as the matter can be placed on the agenda of the City Council.

(b) **Initiation of Review.** The City's Community Development Director shall initiate the annual review by giving to Developer thirty (30) days' written notice that the City intends to undertake such review. The notice shall specify the date on which a public hearing on the annual review shall be conducted by the City Council, as required by Section 604 of the Development Agreement Procedures. Developer shall provide evidence to the Community Development Director prior to the hearing on the annual review to demonstrate good faith compliance with the provisions of the Agreement as provided in Government Code §§ 65864 *et seq*.

(c) **Staff Reports.** To the extent practical, City shall deposit in the mail and fax to Developer a copy of all staff reports, and related exhibits concerning contract performance at least five (5) days prior to the hearing on the annual review.

5.2. Notice of Compliance. With respect to each year for which an annual review of compliance with this Agreement is conducted and where pursuant to Section 5.1 of this Agreement City determines Developer to be in compliance, City, upon request of Developer, shall provide Developer with a written certificate of compliance, in recordable form, duly executed and acknowledged by City ("Notice of Compliance"). Developer shall have the right, in Developer' sole discretion, to record any Notice of Compliance.

5.3 Remedies for Noncompliance. If the City Council finds and determines, on the basis of substantial evidence, that Developer has not complied with the terms and conditions of this Agreement during the period under review, and Developer has been notified of such default and given an opportunity to cure in accordance with the provisions of Section 12.1 of this Agreement, the City Council may modify or terminate this Agreement, as authorized by California Government Code Section 65865.1.

5.4 Fee For Annual Review. The fee for City's annual review shall be paid by Developer and shall not exceed the costs of City staff time and expenses at the customary rates then in effect.

SECTION 6. PERMITTED DELAYS; SUPERSEDURE BY SUBSEQUENT LAWS.

6.1. Permitted Delays. In addition to any specific provisions of this Agreement, performance by any party of its obligations hereunder may be excused during any period of delay caused at any time by reason of (i) war or civil commotion, riots, strikes, picketing, or other labor disputes; (ii) unavoidable shortage of materials or supplies, (iii) damage to work in process by reason of fire, rains, floods, earthquake, or other acts of God; (iv) restrictions or delays imposed or mandated by governmental or quasi-governmental entities; (v) enactment of conflicting Laws (including, without limitation, new or supplementary environmental regulations); (vi) litigation initiated by a nonparty challenging this Agreement, any Project Approval, or the sufficiency of environmental review under CEQA; or (vii) failure of nonparty agencies to promptly process and grant a Project Application through no fault of Developer. Each party shall promptly notify the other party of any delay hereunder as soon as possible after the same has been ascertained. The deadlines set

forth herein shall be extended by the period of any delay hereunder; provided, however, any extensions of time for the performance by Developer of its obligations hereunder is subject to review and approval by the City, which approval shall not be unreasonably withheld.

6.2. Supersedure by Subsequent Laws. If any Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the Parties shall meet in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in Developer's reasonable business judgment, then Developer shall have the right to terminate this Agreement by written notice to the City. If the duration of the period during which such new Law precludes compliance with the provisions of this Agreement (such period, a "Moratorium Period") is less than or equal to one-half (1/2) of the remaining Land Use Term, then, at the Developer's election, the Land Use Term may be extended for the length of such Moratorium Period. If the Moratorium Period is more than one-half (1/2) of the remaining Land Use Term, then, at Developer's election and subject to approval by the City Council, the Land Use Term of this Agreement may be extended pursuant to Section 6.1 for the duration of the period during which such new Law precludes compliance with the provisions of this Agreement. In addition, Developer shall have the right to challenge the new Law preventing compliance with the terms of this Agreement, and, during the period of such challenge, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect, except that the Land Use Term may be extended by the period of such challenge pursuant to Section 6.1 above.

SECTION 7. TRANSFERS AND ASSIGNMENTS.

7.1. Right to Assign. Developer may at any time, upon notice to City but without the necessity of any approval by the City, sell, transfer or assign all or a portion of the Property to third parties (each such other developer is referred to as a "Transferee"), including an assignment to such Transferee of any or all rights, interests and obligations of the Developer hereunder that pertain to the Property or portion of the Property being sold or transferred to such Transferee. In addition, Developer may at any time, upon notice to City but without the necessity of any approval by the City, transfer the Property or any part thereof and all or any part of Developer's rights, interests and obligations hereunder to: (i) any subsidiary, affiliate, parent or other entity which controls, is controlled by or is under common control with Developer, or (ii) any member of Developer or any subsidiary, parent or affiliate of any such member, or (iii) any successor or successors to Developer by merger, acquisition, consolidation, non-bankruptcy reorganization or government action.

7.2 Effect of Sale, Transfer or Assignment. Developer shall be released from any obligations hereunder sold, transferred or assigned to a Transferee pursuant to Section 7.1 of this Agreement, provided that such obligations are expressly assumed by Transferee and Transferee shall agree in writing to be subject to all the terms and conditions of this Agreement. A default by any Transferee shall only affect that portion of the

Property/Project owned by such Transferee and shall not cancel or diminish in any way Developer's rights hereunder with respect to the portion of the Property/Project not owned by such Transferee.

7.3 Permitted Transfer, Purchase or Assignment. The sale or other transfer of any interest in the Property to a lender ("Lender") as a result of a foreclosure or deed in lieu of foreclosure under a deed of trust encumbering the Property, and the subsequent transfer by the Lender to a purchaser ("Purchaser") shall not require the City's approval pursuant to the provision of Section 7.1; *provided, however,* subject to Section 11 of this Agreement, the Lender and any subsequent Purchaser shall take the Property subject to all of the provisions of this Agreement. In no event shall any such Lender or Purchaser be entitled to a building permit, occupancy certificate, or any other permit or approval by the City until all defaults under this Agreement relating to the portion of the Property acquired by such Lender or Purchaser have been cured.

SECTION 8. AMENDMENT AND TERMINATION.

8.1. In General. Except as provided in Section 12.1 relating to termination in the Event of Default, this Agreement may be canceled, modified or amended only by mutual written consent of the parties.

8.2. Major Amendment. Any amendment to this Agreement which relates to the Land Use Term, permitted uses, density or intensity of use, maximum height or maximum dimensions of buildings, requirements for acquisition, reservation or dedication of land for public improvements, the timing or nature of the infrastructure improvements, or which causes a significant environmental impact which is not adequately mitigated, shall be deemed a "Major Amendment" and shall require the same procedure as followed for the initial approval of this Agreement. Notwithstanding the foregoing: (i) Developer shall have the right to amend and revise its architectural plans for the Project subject to City's adopted procedure for amendment of Design Permits; and (ii) no amendment of this Agreement shall be required in connection with City processing and approval of any Subsequent Project Approval.

8.3. Recordation of Amendment. The City shall record an appropriate notice of any Major Amendment, cancellation or termination of this Agreement with the San Mateo County Recorder not later than ten (10) days after the City's action on such amendment, cancellation or termination becomes final. The notice shall be accompanied by a legal description of the Property.

SECTION 9. NOTICES.

9.1. Procedure. Any notice or communication required pursuant to this Agreement by any party ("Notices") shall be in writing and shall be given either personally, by facsimile transmission, by Federal Express or other similar courier promising overnight delivery, or by regular U. S. mail.

(a) If given by Federal Express or similar courier, the Notice shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier.

(b) If personally delivered, a Notice shall be deemed to have been given when actually delivered to the party to whom it is addressed.

(c) If delivered by facsimile transmission, a Notice shall be deemed to have been given upon receipt of the entire document by the receiving party's facsimile machine as shown by the transmission report issued by the transmitting facsimile machine. Notice transmitted after 5:00 p.m. or on Saturday or Sunday shall be deemed to have been given on the next business day.

(d) If delivered by regular U. S. mail, a Notice shall be deemed to have been given three (3) business days after deposit with the U. S. Postal Service. Notices shall be given to the parties at their addresses set forth below:

City:	City of Brisbane Attn: Director of Community Development 50 Park Place Brisbane, CA 94005 Telephone: (415) 508-2111 Fax: (415) 467-4989
Developer:	Sierra Point, L.L.C. c/o Founders Properties Attn: President 10350 Bren Road W Minnetonka, MN 55343
With copy to:	Michael Patrick Durkee, Esq. 180 Grand Avenue, Suite 950 Oakland, CA 94612 Telephone: (510) 465-5750 Fax: (510) 465-5697

Either party may change its mailing address at any time by giving written notice of such change to the other party in the manner provided herein at least ten (10) days prior to the date such change is effected.

9.2. Form and Effect of Notice. Every Notice (other than the giving or withholding of consent, approval or satisfaction under this Agreement but including requests therefor) given to a party shall comply with the following requirements. Each such Notice shall state: (i) the Section of this Agreement pursuant to which the Notice is given; and (ii) the period of time within which the recipient of the Notice must respond or if no response is required, a statement to that effect. Each request for consent or approval shall contain reasonably sufficient data or documentation to enable the recipient to make an informed decision. In no event shall Notice be deemed given if such Notice did not fully

comply with the requirements of this Section. No waiver of this Section shall be inferred or implied from any act (including conditional approvals, if any) of a party, unless such waiver is in writing, specifying the nature and extent of the waiver.

SECTION 10. ESTOPPEL CERTIFICATE.

Either party may, at any time, and from time to time, request written notice from the other party requesting such party to certify in writing that, (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, and (c) to the knowledge of the certifying party the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the parties. The City Manager of City shall be authorized to execute any certificate requested by Developer. Should the party receiving the request not execute and return such certificate within the applicable period, this shall not be deemed to be a default, provided that such party shall be deemed to have certified that the statements in clauses (a) through (c) of this Section are true, and any party may rely on such deemed certification.

SECTION 11. MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE.

11.1 Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

11.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 11.1 above, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; *provided, however*, that a Mortgagee shall take title to the Property subject to the terms and conditions of this Agreement and shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Applicable Law. In no event shall any such Mortgagee be entitled to a building permit, occupancy certificate, or any other permit or approval by City until all defaults under this Agreement relating to the portion of the Property acquired by such Mortgagee have been cured.

11.3 Notice of Default to Mortgagee and Extension of Right to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer have committed an event of default. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed set forth in the City's notice. City, through its City Manager, may extend the thirty-day cure period provided in Section 12.1 for not more than an additional sixty (60) days upon request of Developer or a Mortgagee.

SECTION 12. DEFAULT.

12.1. Default; Termination. Failure or unreasonable delay by any party to perform any obligation under this Agreement for a period of sixty (60) days after written notice thereof from the other party shall constitute an "Event of Default" under this Agreement. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such sixty (60) day period, the commencement of the cure within such time period and the subsequent diligent prosecution to completion of the cure shall be deemed a cure within such period. However, no sixty (60) day period of cure shall be required where this Agreement specifies a date by which particular actions must be taken. Subject to the foregoing, after notice and expiration of the sixty (60) day period without cure, if applicable, the non-defaulting party, at its option, may institute legal proceedings pursuant to Section 12.3 of this Agreement or proceedings to terminate this Agreement. If proceedings to terminate this Agreement are initiated by City, such proceedings shall be conducted in accordance with the provisions of Section 702 of the Development Agreement Procedures. The waiver by either party of any Event of Default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

12.2. Cooperation in the Event of Third-Party Legal Challenge. In the event of any legal or equitable action or proceeding instituted by a third party challenging the validity of any provision of this Agreement or the procedures leading to its adoption or the issuance of any or all of the Project Approvals, the parties hereby agree to cooperate in defending said action or proceeding. Developer agrees to diligently defend any such action or proceeding and to bear the litigation expenses of defense, including attorneys' fees. City shall have the option to employ independent defense counsel at City's expense.

12.3. Legal Actions; Remedies; Attorney's Fees. In addition to any other rights and remedies, any party may institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the parties hereto. In no event shall any party or its elected or appointed officials, officers, agents, employees or volunteers be liable in monetary damages for any breach or violation of this Agreement, it being expressly understood and agreed that, in addition to the right of termination, the

sole legal or equitable remedy available to a non-defaulting party for a breach or violation of this Agreement by the party in default shall be an action in mandamus, specific performance, injunctive or declaratory relief to enforce the provisions of this Agreement. In any such legal action, the prevailing party shall be entitled to recover all litigation expenses, including reasonable attorneys' fees and court costs.

12.4. Effect of Termination. Termination of this Agreement shall not affect Developer's obligation to comply with the standards, terms and conditions of any Project Approvals issued with respect to the Project Site or any portion thereof, nor shall it affect any covenants of Developer which are specified in this Agreement to continue after termination or which must remain in effect to achieve their intended purpose, including but not limited to those set forth in Section 13.

SECTION 13 INDEMNIFICATION AND HOLD HARMLESS

Except for claims, costs and liabilities caused by the negligence, willful misconduct, or breach of this Agreement by City, or its elected or appointed officials, officers, agents, employees and volunteers, Developer hereby agrees to defend, indemnify, save and hold City and its elected and appointed officials, officers, agents, employees and volunteers (collectively, the "City Parties") harmless from any and all claims, costs (including reasonable attorneys' fees) and liabilities for any personal injury, death or property damage (collectively, "Claims") which arise, directly or indirectly, as a result of any construction, improvement, operation, or maintenance work performed by Developer or Developer's contractors, subcontractors, agents or employees in connection with the Project (including work on any off-site improvements), whether such activities were performed by Developer or by any of Developer's contractors or subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, Developer or any of Developer's contractors or subcontractors. Except for claims, costs and liabilities caused by the negligence, willful misconduct, or breach of this Agreement by any of the City Parties, Developer shall defend City Parties with counsel reasonably acceptable to City from actions for such personal injury, death or property damage which is caused, or alleged to have been caused, by reason of Developer's activities in connection with the Project. City will defend, indemnify, save and hold harmless Developer and its officers, agents and employees from any and all Claims caused by the negligence, willful misconduct or breach of this Agreement by any of the City Parties. The parties' obligations under this Section 13 shall survive the expiration or earlier termination of this Agreement.

SECTION 14 MISCELLANEOUS PROVISIONS.

14.1. Good Faith and Fair and Expeditious Dealing. In all dealings and transactions between the Parties that may be conducted pursuant to this Agreement and in the performance of their respective duties and obligations under this Agreement, the parties shall act toward each other and execute the tasks necessary or desirous to the processing contemplated by this Agreement in a fair, diligent, best efforts, expeditious and reasonable manner, and neither Party shall take any action that will prohibit, impair, or

impede the exercise by the other Party of its rights and obligations secured through this Agreement.

14.2. Negation of Partnership. City and Developer specifically acknowledge that the Project is a private development, that no party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the provisions of this Agreement shall be deemed to create a partnership between or among the parties in the businesses of Developer, or the affairs of City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any person who is not expressly made a party and signatory to this Agreement.

14.3. Severability. Invalidation of any provision of this Agreement, or of the application thereof to any person, by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstances and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

14.4. Entire Agreement. This Agreement and the Exhibits hereto contain all the representations and the entire agreement between the parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, all prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and the Exhibits hereto.

14.5. Further Documents. Each party shall execute and deliver such further documents as may be reasonably necessary to achieve the objectives of this Agreement.

14.6. Governing Law; Interpretation of Agreement. This Agreement shall be governed by and interpreted in accordance with the laws of the United States, the State of California and the City of Brisbane.

14.7. Counterparts. This Agreement may be executed in multiple counterparts, which, when taken together, shall constitute a single document.

14.8. Time of Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

14.9. Notice of Termination. Upon the expiration or earlier termination of this Agreement, the parties hereto shall, if requested by another party, execute for recordation in the Official Records of San Mateo County, a notice stating that this Agreement has expired or has been terminated, and, if applicable, that the parties have performed all their duties and obligations hereunder.

14.10 Successors and Assigns. Subject to the restriction against assignment, this Agreement shall constitute a covenant running with the land and shall be binding

upon and inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties.

14.11. Exhibits. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A Legal Description of the Property

Exhibit B Site Plan

Exhibit C Insurance Requirements For Contractors

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

CITY:

CITY OF BRISBANE,
a municipal corporation

Dated: 12/7/2012

By _____
Cliff Lentz, Mayor

ATTEST:

Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:

Harold S. Toppel, ~~City~~ Attorney

DEVELOPER:

SIERRA POINT, L.L.C.,
a Delaware limited
liability company

By _____

STATE OF CALIFORNIA
COUNTY OF SAN MATEO

On 12/7/2012, before me, Sheri Marie Spediacci the undersigned Notary Public, personally appeared Cliff Lentz, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 Sheri Marie Spediacci

SHERI MARIE SPEDIACCI
Commission # 1912108
Notary Public - California
San Mateo County
My Comm. Expires Nov 17, 2014

STATE OF MINNESOTA
COUNTY OF Hennepin

On November 30, 2012, before me, Katherine M Moore the undersigned Notary Public, personally appeared Lee Campa, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 Katherine M Moore

KATHERINE M MOORE
NOTARY PUBLIC – MINNESOTA
My Commission Expires Jan. 31, 2015

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Brisbane, County of San Mateo, State of California, described as follows:

PARCEL 1, AS DESIGNATED ON THE MAP ENTITLED "PARCEL MAP", CITY OF BRISBANE, SAN MATEO COUNTY, CALIFORNIA, WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON FEBRUARY 27, 1987 IN BOOK 58 OF PARCEL MAPS AT PAGES 76, 77 AND 78.

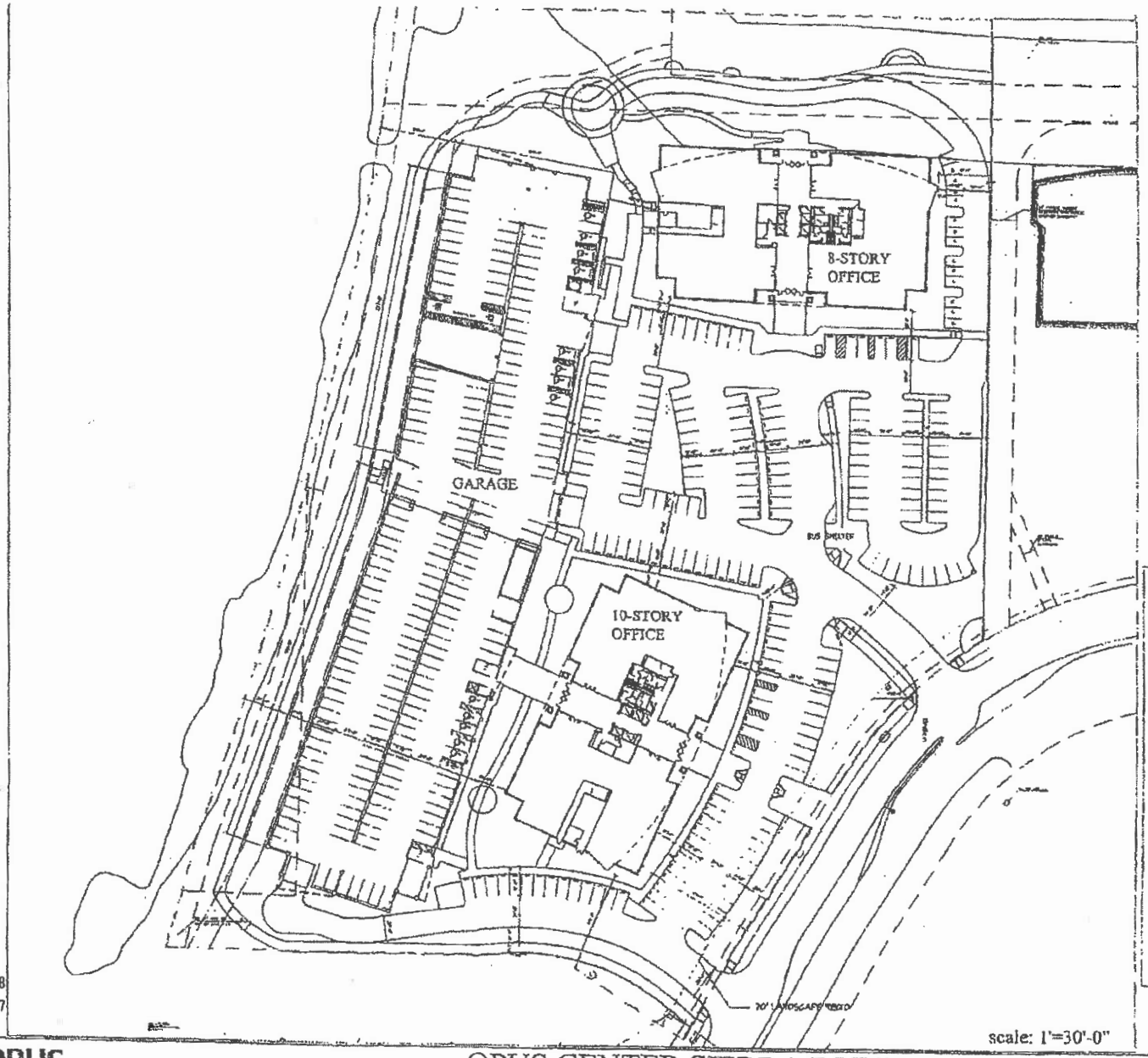
EXCEPTING ALL MINERALS AND ALL MINERAL RIGHTS OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OIL AND GAS AND RIGHTS THERETO, TOGETHER WITH THE SOLE, EXCLUSIVE AND PERPETUAL RIGHT TO EXPLORE FOR, REMOVE AND DISPOSE OF SAID MINERALS BY ANY MEANS OR METHODS SUITABLE TO THE GRANTOR, ITS SUCCESSORS AND ASSIGNS, INCLUDING LATERAL OR SLANT DRILLING, BUT WITHOUT ENTERING UPON OR USING THE SURFACE OF THE LANDS HEREBY CONVEYED, AND IN SUCH MANNER AS NOT TO DAMAGE THE SURFACE OF SAID LANDS OR ANY BUILDING NOR THEREON OR HEREAFTER ERECTED THEREON OR THE SUBSTRUCTURE OF ANY SUCH BUILDING, OR TO INTERFERE WITH THE USE THEREOF BY THE GRANTEE, ITS SUCCESSORS AND ASSIGNS, AS EXCEPTED IN THE FOLLOWING DEEDS TO UTAH CONSTRUCTING & MINING CO., A CORPORATION, PREDECESSOR IN INTEREST TO THE VESTEE HEREIN:

A. FROM MAUDE LOUISE PHILLIPS, RECORDED SEPTEMBER 14, 1959 IN BOOK 3670 OF OFFICIAL RECORDS AT PAGE 624, DOCUMENT NO. 86272-R.

B. FROM JOHN F. WILLCOX, ALSO KNOWN AS JOHN FREDERICK WILLCOX RECORDED SEPTEMBER 14, 1959 IN BOOK 3670 OF OFFICIAL RECORDS AT PAGE 625, DOCUMENT NO. 86273-R.

C. FROM MARITA CLARKE, RECORDED SEPTEMBER 14, 1959 IN BOOK 3670 OF OFFICIAL RECORDS AT PAGE 626, DOCUMENT NO. 86274-R.

APN: 007-165-020-4 and JPN: 106-009-000-12 T and 110-054-000-01 T



STATISTICS

BLDG AREA

8-STORY OFFICE

BLDG FOOTPRINT 25,940 sf

TOTAL BLDG AREA 249,896 sf

10-STORY OFFICE

BLDG FOOTPRINT 25,607 sf

TOTAL BLDG AREA 314,014 sf

TOTAL 563,104 SF

PARKING

ON GRADE 711 (INCLUDES 14 COMPACT STALLS)

GARAGE PKG 1,175

TOTAL 1,886 (INCLUDES 25 CARS HANDICAP STALLS)

12/05/08
09/21/07

scale: 1'=30'-0"

Site Plan

Hoover Associates

OPUS.
a Development of Opus West Corporation

OPUS CENTER SIERRA POINT

Brisbane, California

EXHIBIT B

NORTH

EXHIBIT C
Insurance Requirements For Developers

The Developer shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Developer, its contractors, agents, representatives, or employees. Unless otherwise expressly approved in writing by the City, such insurance shall conform with the following specifications:

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, code 1 (any auto).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Minimum Limits of Insurance

The Developer shall maintain limits no less than:

1. General Liability (including operations, products and completed operations): $2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: $2,000,000 per accident for bodily injury and property damage.

3. Employer's Liability: $2,000,000 per accident for bodily injury or death.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers, or the Developer shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain. the following provisions:

1. The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Developer; and with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Developer's or the Developer's contractor's insurance policy, or as a separate owner's policy (CG 20 10 11 85 or its equivalent).

2. For any claims related to this project, the Developer's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Developer's insurance and shall not contribute with it.

3. The Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after fifteen (15) days' prior written notice has been given to the City.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by the City.

Verification of Coverage

The Developer shall furnish the City with original certificates of insurance or endorsements evidencing coverage required by these specifications. The certificates or endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates or endorsements are to be in form and substance satisfactory to the City and shall be received and approved by the City before work commences. At the request of the City, the Developer shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.