

RECORDING REQUESTED BY:

City of Pleasanton
200 Bernal Avenue
Pleasanton, California 94566
Attn: Peter D. MacDonald,
City Attorney

FOR RECORDER'S USE ONLY:

COPY of Document Recorded
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Has not been compared with original.
ALAMEDA COUNTY RECORDER

**WHEN RECORDED MAIL
CERTIFIED COPIES TO:**

The Prudential Insurance
Company of America
Four Embarcadero Center
Suite 2700
San Francisco, California 94111
Attn: Harry N. Mixon, Esq.

DEVELOPMENT AGREEMENT

Between

CITY OF PLEASANTON

and

**THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA**

DEVELOPMENT AGREEMENT

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EXHIBITS

- Exhibit 1 - Property Description
- Exhibit 2 - Map of North Pleasanton Properties
- Exhibit 3 - Master Subdivision Improvement Agreement

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Attn: Harry N. Mixon, Esq.

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered as of this 22nd day of April, 1986, by and between THE CITY OF PLEASANTON ("City"), a municipal corporation of the State of California, and THE PRUDENTIAL INSURANCE COMPANY OF AMERICA ("Developer"), a New Jersey corporation.

THE PARTIES ENTER THIS AGREEMENT on the basis of the following facts, understandings and intentions:

A. Developer owns certain real property ("Property") located in the City of Pleasanton, County of Alameda,

State of California, more particularly described in Exhibit 1 attached hereto. The Property is contiguous to certain other real property owned by Developer commonly known as Hacienda Business Park Phase I.

B. Developer plans to develop the Property as a commercial and office park ("Project").

C. City wishes to (i) eliminate uncertainty in the comprehensive development planning of large scale industrial and commercial projects, (ii) secure orderly development and progressive fiscal benefits for public services planning and (iii) ensure attainment of the goal of maximum effective utilization of resources at the least economic cost to the public.

D. Developer submitted to City (i) a development plan ("Development Plan") for development of the Project, (ii) an application for three (3) general plan amendments (collectively "Amendments"), amending (a) Property's designation in the Land Use Element of the General Plan from General and Limited Industrial to Industrial/Commercial/Office and (b) the Growth Management Element to provide that the Project is, by definition, consistent with the policies contained therein, and (c) amendments to the Circulation Element to make Owens Drive a collector street and (iii) an application for a zone change of the Project to a planned unit development ("PUD") in accordance with the Development Plan.

E. On March 4, 1986, City approved the Amendments.

F. On March 4, 1986, City certified the final environmental impact report ("FEIR") for the Project.

G. On March 18, 1986, City approved the PUD subject to certain conditions as contained in Ordinance No. 1246. A copy of Ordinance No. 1246 is on file in the City's Office of the Director of Planning.

H. City desires Developer to develop the Property in accordance with this Agreement and the PUD because the long term orderly development of the Project will provide many public benefits to City including, but not limited to, the following:

1. Increased Tax Base. The Project will provide the City with increased tax revenues (including real property taxes, sales, business license, and hotel revenues) from tenants and owners of businesses within the Project. These fiscal benefits will make possible improvements in City services, including particularly police, fire, water and recreational services.

2. Public Improvements. Development of the Project will facilitate completion of public improvements ("Public Improvements") which are included in the North Pleasanton Improvement District, the North Pleasanton Fire Improvement District, and the North Pleasanton Water Improvement District. The Public Improvements will bring

benefits to existing residents of the City, including improvements in traffic conditions, improvements in attractiveness of community, improvements in liveability of many residences along arterial streets, and better fire protection and emergency water supplies.

3. Urban Infill. The Project is a logical geographical area for development, providing an urban infill between surrounding properties which have been developed. The Project lies within the intersection of two major freeways, Interstate 580 and Interstate 680. The Project is serviced by major local thoroughfares and lies within a planned expansion of the Bay Area Rapid Transit System. The Project is already separated from open space areas within the City.

4. Creation of Job Opportunities. The development of the Project will provide a significant number of construction jobs and permanent employment opportunities for the residents of Pleasanton and the Tri-Valley.

I. On February 12, 1986, the City Planning Commission held a noticed public hearing on this Agreement and (i) determined that this Agreement is consistent with the City's General Plan and (ii) voted to recommend that the City Council approve this Agreement.

J. On March 4, 1986, the City Council held a noticed public hearing on this Agreement, found this

Agreement consistent with the City's General Plan and introduced Ordinance No. 1247 approving this Agreement.

K. On March 18, 1986, the City Council adopted Ordinance No. 1247 approving this Agreement.

NOW, THEREFORE, pursuant to the authority contained in Section 65864, et seq., of the California Government Code and in consideration of the mutual covenants and promises of the parties, the parties hereto agree as follows:

1. DEVELOPMENT OF THE PROPERTY.

1.1 PUD. City shall have the right to control development of the Property and Developer shall have the right to develop the Property in accordance with the provisions of PUD-85-81 ("PUD") adopted as Ordinance 1246 on March 18, 1986. Notwithstanding anything herein to the contrary, City shall not, without Developer's consent require public improvements other than as described in the PUD and this Agreement, or as otherwise provided by California law.

1.2 Design Review. City and Developer agree that City does not give up its right, by entering into this Agreement, to subsequently exercise discretionary design review approval of site plans as provided in the PUD, including the right to require mitigations reasonably related to the particular site approval. However, City shall not exercise such discretion in a manner which will materially interfere

with the development of the Property for the uses and to the density and intensity set forth in the PUD or arbitrarily increase the cost of development.

2. EFFECT OF AGREEMENT.

2.1 Local Rules. The Property shall be subject to all the rules, regulations, and official policies and fees (e.g., General Plan, zoning code, subdivision code, building code [collectively "Local Rules"]) of City governing uses, density, height, design, public improvements and construction standards which are in effect at the time the Agreement is executed and any (i) changes to the Local Rules or (ii) new Local Rules; provided, however, such changes or new Local Rules shall not apply if they materially interfere with (A) development of the Property for the uses and to the height, density and intensity set forth in the PUD; (B) the rate of development selected by the Developer; or (C) the cost of development.

2.2 Supersedure By Subsequent State or Federal Laws or Regulations. In the event that state or federal laws or regulations, enacted after this Agreement has been entered into, prevent or preclude compliance with one or more provisions of the Agreement, such provisions of the Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Notwithstanding the foregoing, Developer shall have the right to

challenge the law or regulation preventing compliance with the terms of this Agreement and, in the event such challenge is successful, the Agreement shall remain unmodified and in full force and effect.

3. ADDITIONAL MITIGATIONS.

3.1 Imposition of Additional Mitigations. City and Developer agree that City shall have discretion to reasonably and in good faith determine that the effects of cumulative development of properties within the North Pleasanton area ("North Pleasanton Properties), as more particularly described in Exhibit 2, require additional mitigation measures ("Additional Mitigations") than those required by the PUD, and to impose the cost of financing these Additional Mitigations upon property benefitting therefrom to the extent reasonable and practical.

3.2 Developer's Right of Protest. Subject to the terms of this Agreement, Developer agrees to either (i) not protest the establishment of assessment districts or benefit districts to fund the Additional Mitigations or (ii) to affirmatively vote for the creation of such districts. Developer retains the right to protest and litigate all matters other than the validity of the formation of the district, including but not limited to the type of improvements, cost and allocation of the cost of the improvements among various properties. In the event Developer initiates

or participates in litigation concerning allocation of the cost of improvements, Developer shall allow formation of the district and placement of liens on the Property so long as City provides security which in Developer's reasonable estimation will allow City to pay off the amount of indebtedness that is in dispute in the event Developer prevails in the litigation. A good faith protest pursuant to this Section shall not be construed as an action of noncompliance under the terms of this Agreement.

4. LIMITATIONS ON OBLIGATION TO FUND ADDITIONAL MITIGATIONS.

Notwithstanding anything herein to the contrary, Developer's obligations with respect to Additional Mitigations shall be limited as follows:

4.1 Development of Property. City agrees that it shall not exercise its discretion to impose Additional Mitigations in a manner which will materially interfere with the development of the Property for the uses and to the density and intensity set forth in the PUD.

4.2 Economic Viability. City shall not impose Developer's obligation to participate in the financing of Additional Mitigations if such obligation will impose economically infeasible levels of cost upon the Property. The determination of economic feasibility shall be subject to the reasonable and good faith discretion of the City

Council. The City Council shall provide the Developer with an opportunity to be heard and present evidence on the issue of economic feasibility. The City Council's decision shall be based on substantial evidence. If Developer still disagrees with City Council's determination the matter shall be submitted to the arbitration in accordance with American Arbitration Association rules, and Developer shall pay for the cost of arbitration. The arbitrators selected shall be experienced in real estate economics.

4.3 Scope of Additional Mitigations. Additional Mitigations shall be limited to mitigations which reasonably benefit the North Pleasanton Properties and are necessitated by North Pleasanton development. In the event impacts from North Pleasanton development cause more than fifty percent (50%) of the need for a mitigation, Developer shall not protest formation of an assessment district to finance the cost of the mitigation which shall encumber only the North Pleasanton Properties. An example would be the determination by the City Council that the W. Las Positas/I-680 interchange had become necessary due to cumulative impacts of North Pleasanton development. In the event impacts from North Pleasanton development cause less than fifty percent (50%) of the need for the mitigation, the Developer's obligation shall be limited to its prorata contribution to the problem with the balance to be obtained from other sources.

4.4 Subordination of Obligation to Finance Additional Mitigations - SUBORDINATION AGREEMENT. THIS AGREEMENT CONTAINS A SUBORDINATION CLAUSE WHICH MAY RESULT IN A SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF A LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT. Except to the extent assessment or benefit districts are otherwise imposed upon the Property in accordance with California law, the obligations of Developer under this Agreement to finance Additional Mitigations through liens upon its property shall be automatically subordinate, without the execution and recordation of any instrument, to the lien of any deed of trust or other security instrument encumbering the Property, or any parcel thereof, in favor of a third party lender which secures the repayment of any construction loan or permanent loan, or both ("Loan"), provided the proceeds of such Loan are used only to develop or provide long-term financing for improvement of the Property, or parcel thereof, or both. The City shall execute such subordination agreement or other comparable document as such lender may require to confirm the senior status of the lender's security.

5. TERM.

The term of this Agreement shall commence on the effective date of the ordinance adopting this Agreement and shall

terminate December 31, 2000, unless sooner terminated or extended as hereinafter provided.

6. CONSIDERATION.

In addition to the consideration referenced in the Recitals to this Agreement, Developer shall reserve Site 54 for mitigation of impacts generated by the Project. Site 54 may be used for public transit purposes and for a North Pleasanton Public Services Center, which may include an emergency medical center, police station, fire station and/or such other public services as City and Developer may approve. If approved by City and Developer, Developer shall construct the above-referenced improvements at Developer's expense and lease the improvements to City on a non-profit basis.

7. USES.

The permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings and provisions for reservation or dedication of land for public purposes shall be as provided in the PUD.

8. STANDARD OF REVIEW OF PERMITS.

All permits ("Permits") required by Developer to develop the Property, including without limitation, (i) road construction permits; (ii) grading permits; (iii) building

permits; (iv) sewer connection permits (subject to availability); and (v) certificates of occupancy, shall be expeditiously issued by City upon application by Developer, so long as the following conditions are met:

(a) Compliance With This Agreement and PUD. Developer is in good faith compliance with all terms and conditions contained in either this Agreement or the PUD; and

(b) Compliance With Other City Regulations. Developer has complied with the applicable Local Rules as defined in this Agreement.

9. DISPUTES, ANNUAL REVIEW, DEFAULT.

9.1 Annual Review. City and Developer shall annually review this Agreement and all actions taken pursuant to the terms of this Agreement.

9.2 Developer's Submission. Not less than thirty (30) days nor more than sixty (60) days prior to March 1st of each year, Developer shall submit a letter to the City Council demonstrating Developer's good faith compliance with the terms and conditions of this Agreement and shall include in such letter a statement that such letter is being submitted to City pursuant to the requirements of Government Code Section 65865.1.

9.3 City's Findings. Within thirty (30) days after the receipt of Developer's evidence, the City Council shall determine whether Developer has, for the year under review,

demonstrated good faith compliance with the terms and conditions of this Agreement. If the City Council finds that Developer has complied, the annual review shall be deemed concluded. If the City Council finds and determines that Developer has not complied in good faith with the terms and conditions of this Agreement for the year under review, the City Council may issue a written notice of noncompliance ("Notice of Noncompliance") specifying in detail the grounds therefor and all facts demonstrating such noncompliance such that Developer may address the issues raised in the Notice of Noncompliance on a point-by-point basis. Developer shall have thirty (30) days to respond in writing to the Notice of Noncompliance. If, after receipt of the Developer's response or the passage of the thirty (30) day response period, the City Council, at a public hearing, finds and determines, on the basis of substantial evidence, that the Developer and/or any successor in interest thereto has not complied in good faith with terms or conditions of the Agreement or PUD, the City Council may terminate, amend or modify the Agreement.

9.4 Remedies.

9.4.1 Specific Performance. Unless amended or terminated by mutual consent of Developer and City, this Agreement is specifically enforceable by either party. Notwithstanding anything to the contrary herein, the parties hereto

recognize and acknowledge that there is a risk that circumstances may occur under which one of the parties may not be able to specifically perform its obligations pursuant to the terms of this Agreement for reasons beyond that party's control. City agrees and acknowledges that if one party cannot reasonably be required to specifically perform, then the other party's remedies will be limited to damages, amendment or termination of this Agreement.

9.4.2 Damages. Both parties recognize and agree that damages are not an appropriate remedy for the party being deprived of the full benefits of this Agreement and, in consideration for this Agreement, waive any claim to compensatory damages for breach of this Agreement, except as provided herein. In the event a court shall determine that an action or course of conduct by City or Developer shall constitute a willful and intentional attempt to violate this Agreement, then compensatory damages shall be available. Both parties waive any claim for punitive damages and any claim of personal liability against the officials, officers or agents of the other party.

10. AMENDMENT OR TERMINATION.

10.1 Agreement. If City and Developer mutually agree to terminate or amend the terms of this Agreement, the amendment or termination shall be accomplished in the manner

provided in state law for the adoption of development agreements, except as provided in Subsection 9.3.

10.2 PUD. City and Developer may by mutual agreement, amend or modify the PUD, including Conditions of Approval, without seeking an amendment of this Agreement. This Agreement shall incorporate all the terms and conditions of the PUD as so amended or modified.

11. ASSIGNABILITY.

The right to develop the Property pursuant to this Agreement and the obligation to comply with conditions of the PUD shall run with the Property except as provided herein:

(a) The obligations arising from the Master Subdivision Improvement Agreement, a draft of which is attached hereto as Exhibit 3, shall be personal to Developer and shall also run with any portion of the Property which is still owned by Developer at the time City enforces the obligation.

(b) Developer may assign its obligations pursuant to subsection (a) only upon approval by the City.

12. GENERAL.

12.1 Construction of Agreement. The language in all parts of this Agreement shall, in all cases, be construed as a whole and in accordance with its fair meaning. The captions

of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. This Agreement shall be governed by the laws of the State of California.

12.2 Severability. If any material provision of this Agreement or the PUD or the Amendments shall be found to be invalid, void or illegal, each party shall have the right to seek amendment or termination of this Agreement pursuant to Section 10.1.

12.3 Attorneys' Fees. In the event of any dispute between the parties involving the covenants or conditions contained in this Agreement, the prevailing party shall be entitled to recover reasonable expenses, attorneys' fees and costs.

12.4 No Waiver. No delay or omission by the City in exercising any right or power accruing upon the noncompliance or failure to perform by Developer under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by City of any of the covenants or conditions to be performed by Developer shall not be construed as a waiver of any succeeding breach of the same or other covenants and conditions hereof.

12.5 Exhibits. The following exhibits attached hereto are incorporated herein by this reference.

- Exhibit 1 - Property Description
- Exhibit 2 - Map of North Pleasanton Properties
- Exhibit 3 - Master Subdivision Improvement Agreement

13. NOTICE.

13.1 To Developer. Any notice required or permitted to be given by City to Developer under or pursuant to this Agreement shall be deemed sufficiently given if in writing and delivered personally to an officer of Developer, or mailed, with postage thereon fully prepaid, registered or certified mail, return receipt requested, addressed to Developer as follows:

The Prudential Insurance Company
of America
4309 Hacienda Drive, Suite 500
Pleasanton, California 94566
Attn: Mr. Robert Shallenberger

The Prudential Insurance Company of America
Four Embarcadero Center, Suite 2700
San Francisco, California 94111
Attn: Harry N. Mixon, Esq.

cc: Brobeck, Phleger & Harrison
4637 Chabot Drive, Suite 208
Pleasanton, California 94566
Attn: Deborah M. Castles, Esq.

13.2 To City. Any notice required or permitted to be given to City under or pursuant to this Agreement shall be made and given in writing, if by mail, with postage thereon fully prepaid, registered or certified mail, return receipt requested, addressed to:

City of Pleasanton
200 Bernal Avenue
Pleasanton, California 94566
Attn: City Council
City Attorney
City Manager
Planning Director

and, if personally delivered, to the City Clerk, at the City Hall, together with copies marked for the City Council, City Manager and City Attorney.

13.3 Effect of Notice. The provisions of this Section shall be deemed directives only and shall not detract from the validity of any notice given in a manner which would be legally effective in the absence of this Section.

IN WITNESS WHEREOF, City and Developer have executed this Agreement in one (1) or more copies as of the day

and year first above written.

"City"

THE CITY OF PLEASANTON,
a municipal corporation

BY Frank C. Brandes
Frank C. Brandes, Mayor

ATTEST:

James R. Walker
James R. Walker, City Clerk

"Developer"

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA,
a New Jersey corporation

BY Warren R. Blodgett
Warren R. Blodgett
Its Vice President

APPROVED AS TO FORM:

Peter D. MacDonald
Peter D. MacDonald,
City Attorney

BY Harry N. Nixon
Harry N. Nixon
Its Assistant Secretary

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

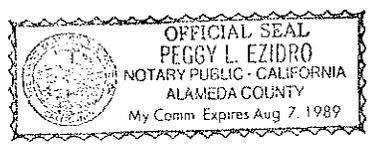
On this 30th day of APRIL, in the year 1986,
before me, PEGGY L. EZIDRO Notary Public in and for the
State of California, personally appeared **FRANK C. BRANDES**
personally known to me ~~(or proved to me on the basis of~~
~~satisfactory evidence)~~ to be the person who executed this
instrument as Mayor of the City of Pleasanton and acknowledged to
me that the public agency executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my official seal in the County of ALAMEDA the
day and year in this certificate first above written.

Peggy L. Ezidro
NOTARY PUBLIC

In and for the State of California

My Commission Expires: 8/7/89

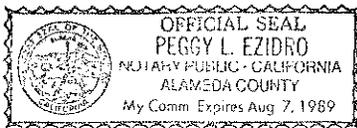


(SEAL)

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA) ss.

On this 30th day of APRIL, in the year 1986
before me, PEGGY L. EZIDRO, Notary Public in and for
the State of California, personally appeared JAMES R.
WALKER personally known to me ~~(or proved to me on the basis of~~
~~satisfactory evidence)~~ to be the person who executed this
instrument as City Manager/Clerk of the City of Pleasanton and
acknowledged to me that the public agency executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my official seal in the County of ALAMEDA the
day and year in this certificate first above written.



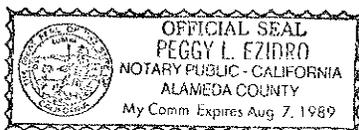
Peggy L. Ezidro
NOTARY PUBLIC
In and for the State of California
My Commission Expires: 8/7/89

(SEAL)

STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA) ss.

On this 30th day of April, in the year 1986,
before me, PEGGY L. EZIDRO, Notary Public in and for
the State of California, personally appeared PETER D.
MACDONALD personally known to me ~~(or proved to me on the basis of~~
~~satisfactory evidence)~~ to be the person who executed this
instrument as City Attorney of the City of Pleasanton and
acknowledged to me that the public agency executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my official seal in the County of ALAMEDA the
day and year in this certificate first above written.



Peggy L. Ezidro
NOTARY PUBLIC
In and for the State of California
My Commission Expires: 8/7/89

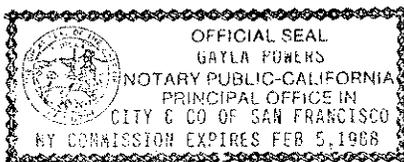
(SEAL)

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO) ss.

On this 29th day of APRIL, in the year 1986, before me, GAYLA POWERS, Notary Public in and for the State of California, personally appeared WARREN R. BLODGETT personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person who executed the within instrument as Vice President on behalf of the corporation therein named and acknowledged to me that the corporation executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of SAN FRANCISCO the day and year in this certificate first above written.

Gayla Powers
NOTARY PUBLIC
IN and for the State of California



My Commission Expires: 02/05/88

(SEAL)

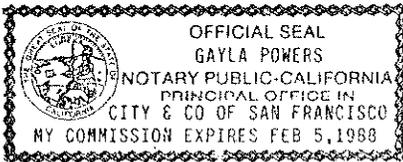
STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO) SS.

On this 29th day of APRIL, in the year 1986, before me, GAYLA POWERS, Notary Public in and for the State of California, personally appeared HARRY N. MIXON, personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person who executed the within instrument as Assistant Secretary on behalf of the corporation therein named and acknowledged to me that the corporation executed it.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of SAN FRANCISCO the day and year in this certificate first above written.

Gayla Powers
NOTARY PUBLIC
In and for the State of California

My Commission Expires: 02/05/88



(SEAL)

EXHIBIT 3

MASTER SUBDIVISION AGREEMENT

PARCEL MAP NO. 3863, PLEASANTON
ALAMEDA COUNTY, CALIFORNIA

THIS AGREEMENT made and entered at Pleasanton, California
this _____, by and between:

Prudential Insurance Company of America
4309 Hacienda Drive, Suite 500
Pleasanton, CA 94566

(hereinafter referred to as "Subdivider") and the CITY OF
PLEASANTON, a general law city, located in Alameda County,
California, acting through the City Manager and the City
Clerk, (hereinafter referred to as "City").

WHEREAS, Subdivider has a tentative map for said subdivision,
lying within the boundaries of the City; duly approved by the
Planning Commission or the City Council; and

WHEREAS, Prudential desires to develop the property as a
260-acre commercial business park ("Project") in accordance with
the conditions of approval ("Conditions") specified in PUD-85-8;
and

WHEREAS, all or a portion of the area of the tentative map is
presented as a "final map", a copy of said map is on file in the
office of the City Engineer, and by reference is included in this
agreement for all purposes as if attached hereto; and

WHEREAS, said map and subdivision of land designates streets,
easements and public ways for the City, and Subdivider proposes
to dedicate this land set forth in the final map to the City; and

WHEREAS, as a condition precedent to accepting this offer of
dedication by Subdivider, City requires the improvements of the
public ways, installation or extension of certain City services
at Subdivider's expense and certain protections for the City on
behalf of the public.

NOW, THEREFORE, in consideration of the faithful performance
of the promises, terms, conditions and covenants set forth herein
by Subdivider and the approval of the map for recording by the
City the parties hereto agree as follows:

1. Time of Essence. Time is of the essence in the performance of this agreement. The work and improvements required by this agreement to be completed by Subdivider shall be completed within two (2) years from the above-mentioned date of this agreement.

The City may extend the time for completion of improvements hereunder, upon good cause being shown by the Subdivider. Any such extension may be granted without notice to the Subdivider's surety, and extension so granted shall not relieve the surety's liability on the bond to secure the faithful performance of this agreement.

2. Work. Subdivider will do or cause to be done and performed the following described work:

- a. Street improvements as shown on all approved improvement plans for Parcel Map 3863 including, but not limited to:
 - (1) Storm drainage system, including storm water inlets and field inlets;
 - (2) Sewers, including lot services;
 - (3) Water, including lot services and irrigation services;
 - (4) Fire hydrants, curb and gutter, sidewalks and pavement; and
 - (5) Bus turn-outs, including shelters and special crosswalk treatments.
- b. Landscaping of medians and intersections as shown on landscape plans including street trees, ground cover, shrubs and irrigation system.
- c. Traffic signal installations at Rosewood/Owens, Hacienda/Owens and Willow/Owens as shown on the traffic signal plans including signals, controllers and detector loops.
- d. Joint utility trenches in conjunction with appropriate utility agencies as shown on the utility plans including conduits for gas, electrical, telephone and cable TV, the actual utilities shall be installed by appropriate utility agency.
- e. Street lighting as shown on the utility plans and street improvement plans including conduit, wiring, poles and illuminaires.
- f. Drainage structure on Owens Drive and Chabot Canal as shown on the improvement plans.

- g. Signing and striping on all public streets as shown on the signing and striping plans.

3. Inspection. City shall inspect all of said work through an inspector employed by City at the cost and expense of Subdivider, and Subdivider shall pay City the Cost of such inspection as fixed by Ordinance.

The City Engineer has tentatively fixed the inspection costs due upon execution of this agreement as follows:

4. Soils Report. Subdivider shall provide a preliminary soil report as required by Section 66490 of the Government Code. Said data shall be compiled by a qualified soils testing engineer without expense to the City.

5. Plans. All of said work shall be done and materials furnished in strict accordance with the approved plans for said tract filed with the City Engineer, and in accordance with the standard specifications and details of the City of Pleasanton. It is further understood that the work and materials shall be under the supervision of the City Engineer, and performed and installed to his satisfaction.

6. Related Contracts and Proceedings. Any prior contracts between City and Subdivider and any prior approvals by Boards, Commissions or Council of City shall not be affected by the provisions of this agreement unless specific modification is set forth herein.

7. Security. On signing this agreement, the Subdivider shall present to the City and file with the City Clerk, improvement security as defined in Section 66499 of the Government Code of the State of California. Said improvement security as approved by the City Attorney, shall consist of the following as determined by the City:

- a. cash deposit made with the City, or
- b. bonds by duly authorized corporate sureties, or
- c. instruments of credit from financial institutions subject to regulation by state or federal government, or
- d. bonds of a duly authorized surety company covering all or a portion of said improvements required herein where a contract for improvements has been let through an assessment district proceeding, and where said bonds have been filed with the City Clerk prior to the execution of this agreement, as a part of the existing improvement district proceedings.

One bond shall be in the amount of 100% of the total estimated cost of the work for each stage of development, conditioned upon faithful performance of this agreement, and one bond in the amount of 100% of the total estimated cost of the work for each stage of development shall secure payment for labor and materials.

Cash or instruments of credit shall be in an amount not less than 100% of the total estimated cost of improvements which is as follows:

\$ _____

In event of breach by Subdivider, City may take over the work and prosecute the same to completion by any method the City deems advisable. Said work shall be for the account and at the expense of the Subdivider. Subdivider shall be liable to the City for any excess costs or damages suffered by the City.

8. Acquisition by Assessment District. At Subdivider's request, the parties shall cooperate with each other to cause an assessment or benefit district ("Assessment District") to be formed as soon as reasonably practical and to cause the Assessment District to reimburse Subdivider for all costs and expenses incurred or paid by Subdivider if such costs and expenses are included as a part of the costs and expenses financed by the Assessment District and such costs and expenses are reimbursable by the Assessment District to Subdivider. Reimbursement by City shall be made within thirty (30) days after the sale of the bonds of the Assessment District.

9. Procedure if No Assessment District. In the event the Assessment District contemplated herein is not formed, all costs, expenses and/or obligations incurred or paid by Subdivider as a result of this Agreement shall be the sole responsibility of Subdivider. Further, in the event the Assessment District does not include as reimbursable costs all the costs and expenses incurred or paid pursuant to this Agreement, those costs and expenses not reimbursable by the Assessment District shall be the sole responsibility of Subdivider.

10. Defects. Subdivider shall be liable for defects in workmanship and materials on all of the above described improvements for a period of one (1) year after acceptance and as security for liability against such defects, Subdivider shall file improvement or maintenance security with the City Clerk, of a type approved by the City Attorney, in the amount of 10% of the total estimated cost set forth above.

11. Worker's Compensation. Before commencing work under this contract, Subdivider shall take out and maintain during the course of this agreement, such worker's compensation insurance as required by the laws of the State of California. If the Acting General Contractor is not the Subdivider, then the General Contractor will provide the City with the said certificate of

worker's compensation insurance prior to start of construction. On failing to do so, the City may procure such insurance for the Subdivider and the Subdivider shall pay the cost.

12. Hold Harmless Agreement. Subdivider hereby agrees to, and shall hold City, its elective and appointive Boards, Commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims from property damage which may arise from Subdivider's contractors', subcontractors', agents' or employees' operation under this agreement, whether such operations be by Subdivider or by any of Subdivider's contractors, subcontractors, or by any one or more persons directly employed by, or acting as agent for, Subdivider or any of Subdivider's contractors or subcontractors. Subdivider agrees to, and shall, defend City and its elective and appointive Boards, Commissions, officers, agents and employees from any suits or actions at law or equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations. In addition to the above.

- a. That City does not, and shall not, waive any rights against Subdivider which it may have by reason of the aforesaid hold-harmless agreement, because of the acceptance by City, or the deposit with City by Subdivider, of any of the insurance policies described herein.
- b. That the aforesaid hold-harmless agreement by Subdivider shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not City has prepared, supplied or approved of, plans or specifications for the subdivision, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

13. Insurance. Subdivider further agrees to fulfill the following:

- a. Provide a Certificate of Insurance issued to this City of Pleasanton from his insurance carrier providing proof of Worker's Compensation and Policy Number. Except if the Acting General Contractor is not the Subdivider, then the General Contractor will provide the City with the said Certificate of Worker's Compensation Insurance prior to start of construction.
- b. Provide a Certificate of Insurance from his insurance carrier showing the amount of Public Liability and Property Damage coverage and naming the City of Pleasanton and Agents as an additional

insured. Insurance coverage shall be in at least the following amounts:

PUBLIC LIABILITY

General Bodily Injury - \$1,000,000 Per Occurrence
General Property Damage - \$ 100,000 Per Occurrence

OR

Combined Single Limit on Bodily Injury and Property
Damage Liability - \$1,000,000

AUTOMOBILE LIABILITY

Bodily Injury - \$500,000 Per Person/\$1,000,000
Per Occurrence

Property Damage - \$100,000 Per Occurrence

OR

Combined Single Limit on Bodily Injury and Property
Damage Liability - \$1,000,000

14. Streets. Use of any or all streets and improvements provided by Paragraph 2, shall at all times prior to the final acceptance of said Subdivision by the City, be at the sole and exclusive risk of Subdivider. Issuance of any Occupancy Permits by City for dwelling within the tract, at any state of development, shall not be construed to be an acceptance of improvements, or a final acceptance of said tract.

15. Street Lights. City shall, before or after acceptance of improvements, give "turn-on" order to power company for only those street lights that City deems necessary to protect the public. Subdivider may at his sole expense provide street lighting not deemed necessary by the City, by arranging for the power company to hold the City harmless from the cost thereof, and by paying the actual power cost for said street lighting so ordered. Developer shall give notice to the City three weeks prior to the proposed occupancy of any dwelling unit(s).

16. Attorney's Fees. In the event City shall install and prevail in any action or suit for the enforcement of any of its rights under this agreement, Subdivider shall pay to City a reasonable attorney's fee as may be fixed by the court on account thereof.

17. Notices. All notices herein required shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notices required to be given to City shall be addressed as follows:

City Manager
City of Pleasanton
200 Old Bernal Avenue
P. O. Box 520
Pleasanton, CA 94566

Notices required to be given to Subdivider shall be addressed as follows:

Mr. Robert Shallenberger
Regional Vice President

Mr. Harry N. Mixon, Esq
Vice President and Regional Counsel

The Prudential Insurance Company of America
4309 Hacienda Drive, Suite 500
Pleasanton, CA 94566

Notices required to be given surety or Subdivider shall be addressed as follows:

Provided that any party or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

18. Binding on Land and Successors. All covenants, promises and agreements contained in this agreement shall pertain to and do hereby expressly run with the land controlled by Subdivider and described herein. This agreement shall bind and inure to the parties hereto, including heirs, assigns, executors, administrators, and all other parties whether they succeed by operation of law or voluntary acts of Subdivider. Signatures and execution of all parties shall be acknowledged before a notary public. Either party may file and record this agreement with the Recorder of Alameda County.

The parties hereto affix their signatures to this agreement as of the date and year first written above.

CITY OF PLEASANTON

ATTEST:

BY: Frank C. Brandes, Jr. Mayor

James R. Walker, City Clerk

PRUDENTIAL INSURANCE COMPANY
OF AMERICA

APPROVED AS TO FORM:

BY: _____

Peter MacDonald, City Attorney