

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of Pleasanton
City Clerk's Office
123 Main Street
Pleasanton, CA 94566

Recording Fees Exempt Pursuant to Government Code
§ 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DEVELOPMENT AGREEMENT
FOR THE COMMONS AT GATEWAY**

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

City of Pleasanton
City Clerk's Office
123 Main Street
Pleasanton, CA 94566

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into in the City of Pleasanton on this _____ day of _____, 2013, by and between the City of Pleasanton, a municipal corporation (the "**City**"), and Pleasanton Gateway, LLC, a Delaware limited liability LLC, (the "**Developer**"), pursuant to the authority of California Government Code sections 65864 *et seq.*

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California enacted California Government Code sections 65864 *et seq.* (the "**Development Agreement Statute**"), which authorizes City to enter into an agreement with any person having a legal or equitable interest in real property regarding the development of such property.

B. Developer has a legal interest in certain real property located in the City of Pleasanton, County of Alameda, California consisting of approximately 26.72 acres located at 1600 Valley Avenue, as more particularly described in **DA Exhibit A-1** attached hereto, and as shown on the site plan attached hereto as **DA Exhibit A-2**. Developer contemplates developing a residential development project on such real property commonly referred to as the "**Commons at Gateway**."

C. In October 2010, the City Council confirmed an 11-member Housing Element Task Force (Task Force) with the mission to oversee the update of the City's Housing Element. After nine Task Force meetings, four community workshops, input from housing experts, and extensive community input, the Task Force recommended a draft list of sites for rezoning to residential uses. On recommendation of the Planning Commission, the City Council, at a duly noticed public hearing held on January 4, 2012, rezoned the real property referred to in Recital B above to Planned Unit Development-High Density Residential (PUD-HDR) and medium density residential (PUD-MDR), with the high density portion of such real property to be developed at a minimum density of 30 units per acre. Such rezoning of the real property referred to in Recital B was approved by Ordinance No. 2031 -to allow high-density and medium density residential use on the site consistent with the Task Force recommendations, the Housing Commission

recommendations from its November 17, 2011 hearing and the direction of the Planning Commission-City Council Joint Workshop held December 6, 2011.

D. City has undertaken several actions to meet its Regional Housing Needs Allocation (“RHNA”), to review and plan for the future constructive reuse of housing uses on this 26.72 acre site, including, without limitation, the following:

(1) CEQA Compliance. A Supplemental Environmental Impact Report was prepared and certified for the City of Pleasanton Housing Element and Climate Action Plan General Plan Amendment (“**Housing Element EIR**”) and Rezonings on January 4, 2012. This recent Housing Element EIR anticipated that a high-density and medium density residential project of up to 300 apartments and 88 single family homes would be constructed on the Project Site (as defined below). Upon receipt of Developer’s project applications, City prepared and considered an Addendum to the Housing Element EIR and determined that the Housing Element EIR fully analyzed all the impacts of the Project.

(2) Housing Site Development Standards and Design Guidelines. On September 4, 2012, the City Council adopted the Housing Site Development Standards and Design Guidelines (“**Design Guidelines**”) to guide development on the rezoned sites, including the Project Site (as defined below).

(3) PUD Development Plan. Following review and recommendation by the City Planning Commission and after a duly noticed public hearing, preparation and consideration of an Addendum to the Housing Element EIR, the City Council, by Ordinance _____ approved the PUD Development Plan (the “**Project Design Review**”) for the 26.72 acre residential housing site referred to above known as the “Commons at Gateway,” surface parking and related site improvements, and collectively referred to in this Agreement as the **Project Site**.

(4) Growth Management Agreement. Following review and approval of the Design Guidelines and the PUD Development Plan for the Project Site, the City Council, by Resolution determined that it was in the best interests of the City to approve a Growth Management Agreement covering the Project Site (the “**GMA**”) and further determined that the City’s obligations to meet its RHNA is best served if City issues the residential building permits for the Project Site consistent with the GMA.

(5) Affordable Housing Agreement. Following review and recommendation of the Housing Commission and after a duly noticed public hearing, the City Council, by Resolution ____ approved an Affordable Housing Agreement covering the Project Site (the “**AHA**”).

(6) Development Agreement. Following review and recommendation by the City Planning Commission and after a duly noticed public hearing, the City Council, by Ordinance ____, determined that this Agreement was consistent with the City’s General Plan and PUD-____, and approved this Agreement.

The approvals described in this Recital D are collectively referred to herein as the “**Project**” or the “**Project Approvals**” and applies only to all of the Commons at Gateway. If Developer applies for development agreement coverage and protection with respect to any real

property located outside of the Commons at Gateway, then any redevelopment by Developer or any of its successors or assigns with respect to any such real property located outside of the Commons at Gateway shall require an amendment to this Agreement for such future approvals to be vested under this Agreement or require a new standalone development agreement.

E. In exchange for the benefits to City described in these recitals, including but not limited to assurance that a residential project consistent with the PUD Development Plan approval referred to above and Design Guidelines intended to meet the City's RHNA can proceed, together with the other public benefits that will result from the development of the Project Site, Developer will receive by this Agreement assurance that it may proceed with the Project in accordance with the "**Applicable Law**" (defined below), and therefore desires to enter into this Agreement.

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants herein contained, City and Developer agree as follows:

AGREEMENT

Article I Description of Property, Effective Date and Term.

Section 1.01 Description of Property. The real property which is the subject of this Agreement is the Commons at Gateway site, as described in the attached **DA Exhibit A-1** and **DA Exhibit A-2**.

Section 1.02 Effective Date. This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective (the "**Effective Date**").

Section 1.03 Term. The term of this Agreement shall commence on the Effective Date and extend ten (10) years thereafter (the "**Term**").

Article II Standards, Laws and Procedures Governing the Project.

Section 2.01 Vested Right To Develop. Developer shall have a vested right to develop the Project Site in substantial conformance with the terms and conditions of the Project Approvals, the Subsequent Approvals (defined below) (as and when issued), the Applicable Law (defined below) and amendments as shall, from time to time, be approved pursuant to this Agreement. Specifically, while Developer contemplates constructing the Project Site in accordance with the Project Design Review, Developer shall have the vested right to develop the Project Site with 210 apartment units, 97 single family homes, surface parking and related site improvements, in accordance with the PUD Development Plan referred to above.

Section 2.02 Permitted Uses. The permitted uses and the density and intensity of use of the Project Site; the maximum height, bulk and size of the proposed buildings, apartments and single family homes; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals

and, as and when they are issued (but not in any limitation of any right to develop as set forth in the Project Approvals), any Subsequent Approvals (defined below).

Section 2.03 Applicable Law. “Applicable Law” shall mean the existing rules, regulations, official policies, standards and specifications governing permitted uses of the Commons at Gateway and the Project Site, governing density, and governing the design, improvements, the City’s Residential Growth Management Program (as set forth in Chapter 17.36 of the Pleasanton Municipal Code), the AHA and applicable City regulations, and construction standards and specifications applicable to the Commons at Gateway and the Project Site as set forth in this Agreement and the Project Approvals, and in force and effect on the Effective Date. During the Term, to the extent there are any conflicts between the Project Approvals (including but not limited to conditions to any of the Project Approvals) and this Agreement, the terms and conditions of this Agreement shall govern. Further, the parties acknowledge that the GMA, once approved, is a vested element of this Agreement, notwithstanding subsequent RHNA cycles, or existing timing provisions or subsequent changes to the City’s Growth Management Ordinance (the “GMO”). Further, during the Term, to the extent there are any conflicts between the GMA and the GMO, the terms and conditions of the GMA shall govern.

Section 2.04 Moratorium, Initiatives and Conflicting Enactments. To the extent consistent with state law (and excepting a declaration of a local emergency or state emergency as defined in Government Code section 8558), if any ordinance, resolution or other measure is enacted subsequent to the Effective Date, whether by action of City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which would otherwise affect the timely development of the Project or Project Approvals or Subsequent Approvals on all or any part of the Project Site (“City Law”), City agrees that such ordinance, resolution or other measure shall not apply to the Project Site, this Agreement, the Project Approvals, or the Subsequent Approvals, if any, during the Term.

Section 2.05 Life of Project Approvals or Subsequent Approvals. The term of any Project Approval or Subsequent Approval shall automatically be extended for the longer of Term of this Agreement or the term otherwise applicable to such Project Approval or Subsequent Approval if this Agreement is no longer in effect. The Term of this Agreement, any other Project Approval or Subsequent Approval shall not include any period of time during which any applicable development or utility moratorium, lawsuit or the actions of other public agencies that regulate land use, delays construction of the Project.

Section 2.06 Development Timing. Subject to Applicable Law, including the GMA, Developer shall have the right to develop the Project on the Project Site in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment.

Section 2.07 Compliance with State and Federal Law. This Agreement is subject to Developer’s compliance with all applicable federal and state laws and regulations and compliance with the California Environmental Quality Act, Public Resources Code sections 21000 *et seq.* (“CEQA”).

Article III Developer Obligations.

Section 3.01 Obligations of Developer Generally. The parties acknowledge and agree that the City's agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Developer's agreement to perform and abide by its long term covenants and obligations, as set forth herein. The parties acknowledge that many of Developer's long term obligations set forth in this Agreement are in addition to Developer's agreement to perform all the mitigation measures identified in the Project Mitigation Monitoring and Reporting Program.

Section 3.02 Development Impact Fees. Except as otherwise specifically set forth in this Article 3 or otherwise herein, Developer shall only pay to City those legally enforceable development impact fees and exactions which are in effect as of the Effective Date. A complete list of these applicable development impact fees and exactions is attached as **DA Exhibit B**. Developer may defer payment of development impact fees and exactions (including but not limited to those set forth or referenced in Sections 3.03, 3.04(f) and 3.07) until issuance of certificates of occupancy. Further, in the event Developer applies for multiple grading or building permits covering portions or phases of the Project, Developer shall only pay those development impact fees (or prepare such study or studies) applicable to the portion or phase of the Project covered by the issued permit. However, during the Term of this Agreement, except as specifically set forth in this Agreement or the Project Approvals, Developer shall pay those periodic cost of living or similar indexed increases, decreases or adjustments to such fees and exactions as are applicable and in effect at the time such fees or exactions would otherwise be payable to City.

Section 3.03 Traffic Mitigation Measures; Traffic Impact Fees. Developer shall be obligated to mitigate the traffic related impacts of the Project in conformance with the Housing Element EIR, Mitigation Measure 4.N-7, which shall be deemed full compliance with General Plan policy, by complying with each of the following:

- (a) Pleasanton Traffic Impact Fee. Developer shall pay to City the applicable Pleasanton Traffic Impact Fee in accordance with the City's fee schedule in effect on the Effective Date of this Agreement, and
- (b) Tri-Valley Transportation Committee Fee. Developer shall pay to the City the Tri-Valley Transportation Committee Fee as may be applicable.

Section 3.04 Below Market Rate Units. As more particularly set forth in the AHA, assuming Developer develops the 210 apartment unit project and 97 single family home project as contemplated by the GMA and the Project Design Review, Developer shall be obligated to make fifteen percent (15%) or thirty-two(32) affordable units available for rent within the Project Site, in accordance with the following:

- (a) sixteen (16) affordable units to households at or below 50% of the Area Median Income ("AMI");
- (b) sixteen (16) affordable units to households at or below 60% of the AMI;

- (c) The AHA shall more specifically identify the affordable unit mix, including required number of unit types, units for the physically disabled, unit construction quality and location, for these affordable units;
- (d) The affordable unit rents shall be based on the following household sizes:
 - (1) Studio Unit: One (1) person household;
 - (2) 1 Bedroom Unit: Two (2) person household;
 - (3) 2 Bedroom Unit: Four (4) person household;
 - (4) 3 Bedroom Unit: Five (5) person household; and
- (e) City acknowledges and finds that in recognition of the Project compliance with the fifteen percent (15%) affordable housing calculation provided in the City's inclusionary zoning ordinance, the Project is exempt from any obligation to pay the City's Lower Income Housing Fee.
- (f) In addition to the thirty-two (32) affordable units, Developer shall pay, at issuance of the certificates of occupancy, a City Lower Income Housing Fee of \$5,356 for each of the ninety-seven (97) single family units for a total of \$519,532.

Section 3.05 School Fees. Developer shall pay fees in accordance with State Law as provided by the Housing Element EIR. Furthermore, Developer shall do the following with respect to the development of residential units on the Project Site: Developer shall work with the Pleasanton Unified School District (PUSD) to develop a program to offset this project's long term effect on school facility needs in Pleasanton. This program shall be designed to fund school facilities necessary to offset this project's reasonably related effect on the long-term need for expanded school facilities. The method and manner of providing these funds and/or facilities to PUSD by Developer shall be approved by PUSD and in place prior to building permit issuance. Written proof of compliance with this condition shall be provided by Developer to the City, on a form generated by PUSD, prior to building permit issuance. If required by PUSD, as part of the program developed to offset this project's long term effect on school facility needs in Pleasanton, Developer shall pay to PUSD the school impact fees and supplemental mitigation amounts that PUSD has in place at the time Developer files an application for a building permit for this project. To the extent Developer enters into a written agreement with PUSD concerning the payment of school fees and/or supplemental mitigation amounts with respect to the development of residential units on the Project Site, then, the preceding sentence to the contrary notwithstanding, Developer shall pay school fees and supplemental mitigation amounts, if any, in accordance with the written agreement entered into between Developer and PUSD and Developer shall provide to City, prior to building permit issuance, PUSD's written confirmation of such agreement.

Section 3.06 Processing Fees; Permit Fees

- (a) Building Permit. Developer shall pay to City building permit fees in accordance with the City's building permit ordinance in effect at the time the applicable building permit is granted by City.
- (b) Processing Fees. Developer shall pay to City the City's reasonable application processing fees for the Project in accordance with the City's fee schedule in effect at the time Developer submits the applicable Project application for processing.

Section 3.07 Park Fees. Consistent with, and in satisfaction of Developer's Quimby Act (Gov't code section 66477) and City Park Fee Ordinance (Chapter 19.44 of the Pleasanton Municipal Code), Developer will pay City park fees totaling approximately _____ Dollars (\$_____). The precise amount of this contribution will be determined in accordance with the terms of the City's Park Land Fee Ordinance (Ordinance No. 1605) in effect on the Effective Date. Developer acknowledges that the inhabitants of the Project will benefit whether the City elects to apply these funds to the acquisition of parkland or to park and recreational improvements to the development of the Bernal Community Park or any other park requirement designated by the City.

Article IV City Obligations.

Section 4.01 Protection of Vested Rights. To the maximum extent permitted by law, City shall take any and all actions as may be necessary or appropriate to ensure that the vested rights provided by this Agreement can be enjoyed by Developer and to prevent any City Law from invalidating or prevailing over all or any part of this Agreement. City shall cooperate with Developer and shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. City shall not support, adopt, or enact any City Law, or take any other action which would violate the express provisions or intent of the Project Approvals or the Subsequent Approvals (defined below).

Section 4.02 Availability of Public Services. To the maximum extent permitted by law and consistent with its authority, City shall assist Developer in reserving capacity for sewer, water and any other services as may be necessary to serve the Project.

Section 4.03 Developer's Right to Rebuild. City agrees that Developer may renovate or rebuild the Project Site within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, or should the buildings located within the Project Site become functionally outdated, within Developer's sole discretion, due to changes in technology. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA.

Section 4.04 Processing Subsequent Approvals. "Subsequent Approvals" shall mean those certain other land use approvals, entitlements, and permits other than the Project Approvals which are necessary or desirable for the development of the Project on the Project Site. The Subsequent Approvals may include, without limitation, the following: amendments of the Project Approvals, lot line adjustments and/or subdivision maps, improvement agreements, grading

permits, building permits, sewer and water connection permits, and certificates of occupancy. The Subsequent Approvals shall be deemed tools to implement those final policy decisions reflected by the Project Approvals and shall be issued by City so long as they comply with this Agreement and Applicable Law and are not inconsistent with the Project Approvals. Without limiting the preceding provisions of this Section 4.04 or Sections 2.01-2.02, City shall not (a) impose any conditions of approval or other requirements upon any Subsequent Approvals that conflict with any Project Approvals or that could prevent or materially increase the cost of development of the Project pursuant to the Project Approvals; or (b) require any further legislative level entitlements to enable Developer to build out the Project on the Project Site.

Article V Miscellaneous.

Section 5.01 Amendment to Project Approvals.

- (a) **Administrative Project Amendments.** Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, the Director of Community Development or his/her designee shall determine (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is substantially consistent with this Agreement and Applicable Law. If the Director of Community Development or his/her designee finds that the proposed amendment or modification is minor, substantially consistent with this Agreement and Applicable Law, and will result in no new significant impacts not addressed and mitigated in the Housing Element EIR and Addendum thereto, the amendment shall be determined to be an “Administrative Project Amendment” and the Director of Community Development or his designee may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, minor increases or reductions in the density which do not affect the number of required affordable units as described in Section 3.04 above, minor increases or decreases in the intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments.

- (b) **Other Project Amendments.** Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which does not satisfy the requirements for an Administrative Project Amendment shall be subject to the review, consideration and action by City pursuant to the Applicable Law and this Agreement.

Section 5.02 Amendment of Agreement. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the parties hereto or their successors in interest, as follows:

- (a) Administrative Agreement Amendments. Any amendment to this Agreement which does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of the Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Project Site or the maximum height or size of proposed buildings, or (vi) monetary contributions by Developer, shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. Such amendment may be approved by the Community Development Director who shall make the determination in the context of the overall Project.
- (b) Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval shall require an amendment to this Agreement. Instead, any such amendment automatically shall be deemed to be incorporated into the Project and vested under this Agreement.
- (c) Scope of Amendment. An amendment to this Agreement may properly address new impacts, if any, resulting from the proposed amendment and shall not serve as an opportunity for City to revisit vested rights unrelated to such amendment.

Section 5.03 Cooperation in Event of Legal Challenge. In the event of an administrative, legal or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of this Agreement or any Project Approval or Subsequent Approval, the parties shall cooperate in defending such action or proceeding. The parties shall use best efforts to select mutually agreeable legal counsel to defend such action, and Developer shall pay compensation for such legal counsel; provided, however, that such compensation shall include only compensation paid to counsel not otherwise employed as City staff and shall exclude, without limitation, City Attorney time and overhead costs and other City staff overhead costs and normal day-to-day business expenses incurred by City. Developer's obligation to pay for legal counsel shall not extend to fees incurred on appeal unless otherwise authorized by Developer. In the event City and Developer are unable to select mutually agreeable legal counsel to defend such action or proceeding, each party may select its own legal counsel at its own expense.

Section 5.04 Defaults. In the event City or Developer defaults under the terms of this Agreement, City or Developer shall have all rights and remedies provided under law. No default hereunder shall render invalid the lien of any deed of trust, mortgage or security interest in or upon the Project Site or any improvements or fixtures at any time located thereon.

Section 5.05 Periodic Review. Throughout the Term of this Agreement, at least once every twelve (12) months following the execution of this Agreement, City shall review the extent of good-faith compliance by Developer with the terms of this Agreement.

Pleasanton, CA 94566
Attn: Nelson Fialho, City Manager
Telephone: (925) 931-5002
Facsimile: (925) 931-5482

With Copies to: City of Pleasanton
City Hall
123 Main Street
P.O. Box 520 Pleasanton, CA 94566
Attn: Jonathan Lowell, City Attorney
Telephone: (925) 931-5015
Facsimile: (925) 931-5482

If to Developer, to: Pleasanton Gateway, LLC
1690 Dell Avenue
Campbell, CA 95008
Attn: Scott Trobbe
Telephone: (408) 379-0400
Facsimile: (408) 379-3229

With Copies to: Berliner Cohen
10 Almaden Boulevard, 11th Floor
San Jose, CA 95113
Attn: Sam Farb
Telephone: (408) 286-5800
Facsimile: (408) 998-5388

Section 5.12 Exhibits. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

- DA EXHIBIT A-1.....Legal Description of Commons at Gateway Site
- DA EXHIBIT A-2.....Diagram of Commons at Gateway
- DA EXHIBIT BList of City Development Impact Fees

Section 5.13 Entire Agreement, Counterparts and Exhibits. This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of ___ pages and three exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and the Developer.

Section 5.14 Estoppel Certificate. Developer may, at any time, and from time to time, deliver a written notice to City requesting City 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, and if so amended, identifying the amendments entered into

by the parties, and (c) to the knowledge of City, neither party is or has been in default under this Agreement, or if any such default has to City's knowledge occurred, describing the nature of any such event of default and any cure thereof. City shall execute and return such certificate to Developer within ten (10) days following City's receipt thereof, and if City fails so to do within such 10-day period, the information in Developer's notice shall conclusively be deemed true and correct in all respects. The Director of Community Development, on behalf of City, shall execute certificates requested by Developer hereunder. City acknowledges that any certificate hereunder may be relied upon by any transferee or mortgagee of any interest of Developer hereunder.

Section 5.15 Further Assurances. Each of the parties covenants, on behalf of itself and its successors and assigns, to take all actions and to execute, with acknowledgment or affidavit if required, any and all documents and writings, that may be reasonably necessary, proper or convenient to achieve the purposes and objectives of this Agreement.

Section 5.16 Interpretation. Captions and headings in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of any provision of this Agreement. As used herein: (a) the singular shall include the plural (and vice versa) and the masculine or neuter gender shall include the feminine gender (and vice versa) where the context so requires; (b) locative adverbs such as "herein," "hereto," and "hereunder" shall refer to this Agreement in its entirety and not to any specific section or paragraph; (c) the terms "include," "including," and similar terms shall be construed as though followed immediately by the phrase "but not limited to;" (d) "shall," "will," "must," "agrees," and "covenants," are mandatory and "may" is permissive; and (e) "or" is not exclusive. The parties have jointly participated in the negotiation and drafting of this Agreement, and this Agreement shall be construed fairly and equally as to the parties, without regard to any rules of construction relating to the party who drafted a particular provision of this Agreement.

Section 5.17 Recordation of Development Agreement. Pursuant to California Government Code section 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of Alameda.

[Signatures on next page]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the day and year first above written.

“CITY”

Dated: _____

CITY OF PLEASANTON,
a municipal corporation

By: _____
Nelson Fialho
City Manager

Dated: _____

Approved as to form:

By: _____
Jonathan Lowell
City Attorney

“DEVELOPER”

Dated: _____

PLEASANTON GATEWAY, LLC
a Delaware limited liability company

By: SB Pleasanton, LLC,
a California limited liability company,
its Manager

By: _____

Name: _____

Title: _____

STATE OF CALIFORNIA

ss.

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature _____ [Seal]

STATE OF CALIFORNIA

ss.

COUNTY OF _____

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

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

WITNESS my hand and official seal.

Signature _____ [Seal]

DA-EXHIBIT A-1

LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Pleasanton, County of Alameda, State of California, described as follows:

LOT 2 OF PARCEL MAP 920, FILED DECEMBER 15, 2010, IN BOOK 316 OF PARCEL MAPS, AT PAGE 68, ALAMEDA COUNTY RECORDS.

APN: 947-0008-033

DA-EXHIBIT B

LIST OF CITY DEVELOPMENT IMPACT FEES