

EXHIBIT C
CONDITIONS OF APPROVAL FOR LEONA QUARRY PROJECT
VESTING TENTATIVE MAP, PLANNED UNIT DEVELOPMENT APPROVAL
AND DESIGN REVIEW
City Council Resolution

2005 ANNUAL PROJECT COMPLIANCE UPDATE

10/15/2005

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General Conditions and Compliance with Approved Plans

1. The project shall comply with the following plans and exhibits entitled “Leona Quarry,” as prepared by the following consultants (“the Project Plans”):

Architect

KTGY Group Inc.
17992 Mitchell South
Irvine
CA 92614
(949) 851-2133
(949) 851-5156 (Fax)

Civil Engineer

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Carlson, Barbee & Gibson, Inc.
2603 Camino Ramon, Suite 100
San Ramon
CA 94583
(925) 866-0322
(925) 866-8575 (Fax)

Landscape Architect
Bradani & Associates
Landscape Architecture
90 Throckmorton Avenue
Mill Valley, CA
(415) 383-9780

I. Site Plan and Landscape Plans

- S-1 Site Plan
- K-1 Key Plan
- L-1 Landscape Site Plan
- L-2 Street/Landscape Uphill Townhome Product 2
Downhill Condo Product 1
- L-3 Street/Landscape Village Green Product 4
Downhill Condo Product 2
- L-4 Street/Landscape Village Green Product 4
- L-5 Street/Landscape Downhill Townhome Product 5
- L-6 Street/Landscape Uphill Townhome Product 7
Downhill Townhome Product 6
- L-7 Street/Landscape Terrace Product 8
- L-8 Phase 1 Landscape Site Sections Uphill Townhome Product 2
Downhill Townhome Product 5
Downhill Condo Product 1
- L-9 Phase 1 Landscape Site Sections Village Green Product 4
Downhill Condo Product 2
- L-10 Phase 2 Landscape Site Sections Uphill Townhome Product 7
Downhill Townhome Product 6
Terrace Product 8
- L-11 Landscape Village Green Product 4
- L-12 Landscape Plan at Park
- L-13 Landscape Entry Feature

II. Architecture: Plans and Elevations

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- | | | |
|-----|------------------------------|--|
| 1-1 | Perspective Phase 1 | Product 1&2 |
| 1-2 | Phase 1 | Product 1: 6-Plex Downhill Condo Floor Plans |
| 1-3 | Phase 1 | Product 1: 7-Plex Downhill Condo Floor Plans |
| 1-4 | Phase 1 | Product 1: 6 & 7-Plex Downhill Condo Floor Plans |
| 1-5 | Phase 1 | Sections |
| 1-6 | Phase 1 | Product 1: Roof Plans |
| | | |
| 2-1 | Phase 1 | Product 2: 5-Plex Uphill Townhome Floor Plans |
| 2-2 | Phase 1 | Product 2: 5-Plex Uphill Townhome Elevations |
| | | |
| 3-1 | Phase 1 | Product 3: Duet Downhill Townhome Floor Plans and Elevations |
| | | |
| 4-1 | Perspective Village Green | |
| 4-2 | Phase 1 | Product 4: Village Green 8-Plex Floor Plans |
| 4-3 | Phase 1 | Product 4: Village Green 8-Plex Elevations |
| 4-4 | Phase 1 | Product 4: Village Green 10-Plex Floor Plans |
| 4-5 | Phase 1 | Product 4: Village Green 10-Plex Floor Plans |
| 4-6 | Phase 1 | Product 4: Village Green 10-Plex Elevations |
| 4-7 | Phase 1 | Product 4: Village Green 8 & 10-Plex Roof Plans |
| 4-8 | Phase 1 | Product 4: Village Green 8 & 10-Plex Sections |
| | | |
| 5-1 | Phase 1 | Product 5: 4-Plex Downhill Townhome Floor Plans |
| 5-2 | Phase 1 | Product 5: 4-Plex Downhill Townhome Elevations |
| 5-3 | Phase 1 | Product 5: 4-Plex Downhill Townhome Elevations |
| | | |
| 6-1 | Perspective Phase 2 | Product 6 & 7 |
| 6-2 | Perspective Phase 2 | Product 6 & 7 |
| 6-3 | Phase 2 | Product 6: 4-Plex 6A Downhill Townhome Roof Plans |
| 6-4 | Phase 2 | Product 6: 4-Plex 6B Downhill Townhome Roof Plans |
| 6-5 | Phase 2 | Product 6: 4-Plex 6B-1 Downhill Townhome Elevations |
| 6-6 | Phase 2 | Product 6: 4-Plex Downhill Townhome Elevations |
| 6-7 | Phase 2 | Product 6: Uphill/Downhill Townhome Sections |
| | | |
| 7-1 | Phase 2 | Product 7: 4-Plex 2A Uphill Townhome Floor Plans |
| 7-2 | Phase 2 | Product 7: 4-Plex 2B Uphill Townhome Floor Plans |
| 7-3 | Phase 2 | Product 7: 4-Plex 2C Uphill Townhome Floor Plans |
| 7-4 | Phase 2 | Product 7: 4-Plex 2D Uphill Townhome Floor Plans |
| 7-5 | Phase 2 | Product 7: 4-Plex 2C Uphill Townhome Elevations |
| 7-6 | Phase 2 | Roof Plans |
| | | |
| 8-1 | Perspective Terrace Building | Product 8 |

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8-2	Phase 2	Product 8: 6-Plex Terrace Building Floor Plans
8-3	Phase 2	Product 8: 6-Plex Terrace Building Elevations
8-4	Phase 2	Product 8: 6-Plex Terrace Building Sections
8-5	Phase 2	Product 8: 12-Plex Terrace Building Floor Plans
8-6	Phase 2	Product 8: 12-Plex Terrace Building Floor Plans
8-7	Phase 2	Product 8: 12-Plex Terrace Building Floor Plans
8-8	Phase 2	Product 8: 12-Plex Terrace Building Floor Plans
8-9	Phase 2	Product 8: Roof Plans
8-10	Phase 2	Product 8: 12-Plex Terrace Building Elevations
8-11	Phase 2	Product 8: 12-Plex Terrace Building Elevations

- 9-1 Gateway Senior Apartments
- 9-2 Gateway Senior Apartments
- 9-3 Perspective Senior Apartments & Gateway

- 10-1 Phase 1 Site Sections
- 10-2 Phase 2 Site Sections
- 10-3 Perspective from MacArthur Freeway
- 10-4 Perspective from MacArthur Freeway

CC Community Center

III. Vesting Tentative Tract Map

Vesting Tentative Tract Map -Tract 7351 Sheets 1 through 5 (September 25, 2002)

**The project applicant is The DeSilva Group, (DSG). Current plans are in substantial compliance with all the above Project Plans.*

2. The Project Applicant and its agents, heirs, successors and assigns (collectively, the “Project Applicant”) shall be bound by these Conditions of Approval and by any other terms and condition of “this Approval” (as defined in Condition No. 3, below). The Project Applicant shall be responsible for assuring that any such successive owner or any of the Project Applicant’s agents, heirs, successors and assigns is fully informed of the terms and conditions of this Approval.

**DSG will assure that any such successive owner or any of the Project Applicant’s agents, heirs, successors and assigns is fully informed of the terms and conditions of this Approval.*

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3. This action by the City Council (“this Approval”) includes the approvals set forth in this Condition of Approval No. 3. Each of these individual approvals shall become effective when the court in the *Dorsey v. Oakland* proceeding lifts the stay of the force and effect of Ordinance 12457 (the “Effective Date”). This Approval includes:
- a. Approval of a Planned Unit Development (“PUD”) including a preliminary development plan and final development plan under Oakland Municipal Code Section 17.140, for phased construction of 477 residential units, including 54 affordable senior units, as set forth in the Project Plans, as modified by these Conditions of Approval.
 - b. Approval of Residential Design Review under 17.136 of the Oakland Municipal Code in accordance with Condition of Approval No. 14.
 - c. Approval of a Vesting Tentative Map (“VTM”) under Oakland Municipal Code 16.08.040 and the State Subdivision Map Act (Government Code Sections 66410 - 66499.37). The VTM approval shall expire according to the provisions of the State Subdivision Map Act and any amendments thereto and the applicable provisions of the Oakland Municipal Code. The VTM may employ multiple (phased) final maps, subject to the phasing program illustrated on the VTM and in these Conditions of Approval. The VTM is approved as a vesting tentative map for the entire site (approximately 128 acres) within the City. Therefore, the City shall have final map approval authority and shall have the authority, within its sole discretion, to amend the VTM.
 - d. Three variances to residential design review standards pursuant to special design requirements and residential design review standards (Oakland Municipal Code 17.108) as follows: retaining wall height; maximum garage width and percentage of front yard paving.
- *The stay of the force and effect of Ordinance 12457 has been lifted in accordance with the above.*
4. The plans approved as part of the PUD shall be amended to be consistent with the Conditions of Approval and shall be submitted to the City Planning Department in the form of a “PUD Design and Specification Document for the Leona Quarry Project” within ninety (90) days of this Approval. This Design and Specification

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Document shall include but not be limited to all detailed plans and specifications pertaining to Condition of Approval No. 14 and all other information and details deemed necessary by the Development Director or the Development Director's designee.

**The PUD Design and Specification Document for the Leona Quarry Project was amended in compliance with the above then reviewed and approved by the City of Oakland Planning Commission Design Review Committee, (PCDRC) March 24th 2004.*

5. The work described in "Construction Phase B (Site Preparation)" in Condition of Approval No. 13 below, shall commence within two (2) years following the Effective Date. Thereafter, such construction shall be governed by Condition of Approval No. 13, and this Approval. The above referenced time period shall exclude any and all time involved with administrative appeals, third-party lawsuits, and other similar delays challenging the Project Approvals not caused by the Project Applicant. Once construction is commenced, the Project Applicant shall use its good faith and diligence to continue until construction is completed.

**Construction Phase B (Site Preparation) began in April of 2004. As of this date the mass grading is substantially complete. Other aspects of Construction Phase B are anticipated to be complete in 2006.*

6. Notice of Exactions:
 - a. This Approval includes certain dedication requirements, reservation requirements and non-monetary exactions as set forth in these Conditions of Approval. Pursuant to Government Code 66020(d)(1), this Approval constitutes written notice of a description of the dedications, reservations and other exactions. The Project Applicant is hereby further notified that the ninety (90) day period in which these dedications, reservations and other exactions may be protested, pursuant to Government Code 66020(a), shall commence on the Effective Date. If the Project Applicant fails to file a protest within this ninety (90) day period complying with all of the requirements of Section 66020, Project Applicant will be legally barred from challenging such exactions.

**DSG did not protest as provided above and pursuant to Govt. Code 66020(a)*

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- b. This Approval includes certain fees, which shall be set forth in a Leona Quarry Fee Schedule to be provided by the Development Director to the Project Applicant. Delivery of the Leona Quarry Fee Schedule by the Development Director to the Project Applicant shall constitute written notice, pursuant to Government Code 66020(d)(1), of a statement of the amount of such fees. The Project Applicant is hereby further notified that the ninety (90) day period in which these fees may be protested, pursuant to Government Code 66020(a), shall commence on delivery by the Development Director of the Leona Quarry Fee Schedule to the Project Applicant. If the Project Applicant fails to file a protest within this ninety (90) day period complying with all of the requirements of Section 66020, the Project Applicant will be legally barred from challenging such fees.

**The Applicant did not protest pursuant to Government Code 66020(a). An Agreement for Payment of City Fees and Reimbursement of Specialized Consultant and Employee Services (Reimbursement Agreement) was fully executed 6/23/05*

7. Final inspection and a certificate of occupancy for any unit or other structure within a phase, as set forth in Condition of Approval No. 13, shall not be issued until (a) all landscaping and on and off-site improvements for that phase are completed in accordance with this Approval, or (b) until cash, an acceptably rated bond, a certificate of deposit, an irrevocable standby letter of credit or other form of security (collectively "security"), acceptable to the City Attorney, has been posted to cover all costs of any unfinished work related to landscaping and public improvements plus 25 percent within that phase, unless already secured by a subdivision improvement agreement approved by the City., except that such security shall not be a substitute for completion of the Reclamation Work in accordance with Condition No. 12. For purposes of these Conditions of Approval, a certificate of occupancy shall mean a final certificate of occupancy, not temporary or conditional, except as the City determines may be necessary to test utilities and services prior to issuance of the final certificate of occupancy.

**Acknowledged. Not yet applicable.*

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8. Except as otherwise provided below in this Condition of Approval No. 8 with respect to City's issuance of a certificate of occupancy for a unit, each of the Conditions of Approval shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law, including without limitation, Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the property that is subject to this Approval (the "Property"), as appropriate, runs with the Property and is binding upon the owner of all or a portion of the Property and each successive owner. Within ninety (90) days of the Effective Date, the Project Applicant shall cause these Conditions of Approval to be recorded in the Official Records of the County of Alameda, California against all of the Property. These Conditions of Approval also shall be attached to each grading permit and each building permit for infrastructure work issued for each phase of construction. Upon City's issuance of a certificate of occupancy for a unit, these Conditions of Approval shall be released from the exceptions to title of the parcel upon which the unit is located. Upon completion of the Project, as determined by the City, these Conditions of Approval shall be released from the all of the Property.

** Acknowledged. Portions related to occupancy permits and releases from exceptions to title not yet applicable.*

In accordance with the above the COAs were recorded 5/12/04 in the Official Records of the County of Alameda, California against all of the Property. The grading permit was issued 4/23/04 and each subsequent grading permit and each building permit for infrastructure work issued for each phase of construction has and/or will, as applicable, be bound by these COAs.

Indemnification Requirements

9. To the maximum extent permitted by law, the Project Applicant shall defend, hold harmless, and indemnify the City, the GHAD and their respective officers, agents and employees (the "Indemnified Parties) against any and all liability, damages, claims, demands, judgments or other losses (including, without limitation, attorneys fees, expert witness and consultant fees and other litigation expenses), or an initiative relating to, resulting from or caused by, or alleged to have resulted from or caused by any action or approval associated with the Project.

This indemnity includes, without limitation, any legal or administrative challenge, or initiative filed or prosecuted to overturn, set-aside, stay or otherwise rescind any or all approvals granted in connection with the Project, certification of the Environmental Impact Report ("EIR") for the Project, and granting any permit issued in accordance with the Project. This indemnity includes, without

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limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs as used herein shall include, without limitation, any attorneys' fees, expert witness and consultant fee, court costs and other litigation fees, City Attorney time and overhead costs, and other City Staff overhead costs and normal day-to-day business expenses incurred by the City ("Litigation Expenses"). The Indemnified Parties shall have the right to select counsel to represent the Indemnified Parties, at the Project Applicant's expense, in the defense of any action specified in this Condition of Approval No. 9. The Indemnified Parties shall take all reasonable steps to promptly notify the Project Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these Conditions of Approval.

**A "Defense and Indemnity Agreement" was executed between the City and DSG 4/8/04 memorializing the terms and satisfying the requirements of COA # 9.*

10. Not in limitation of the foregoing Condition of Approval No. 9, Project Applicant shall defend, hold harmless and indemnify the Indemnified Parties and their insurers against any and all liability, damages, claims, demands, judgments, losses ("Indemnified Claims") or other forms of legal or equitable relief related to implementation of the Project, including, without limitation, the formation and operation of the GHAD and in the case of the City Council members, actions taken by said members while acting as the GHAD Board of Directors, design, construction or maintenance of the Project and any private or public improvements. Notwithstanding the last sentence of Condition of Approval No. 8, the foregoing indemnity shall not be released upon completion of the Project. A Project Applicant may be released from this indemnity obligation, including the Indemnification Agreement referred to in Condition of Approval 11, only in the event (a) it is assigned to and assumed by and binding upon a subsequent owner of the Property, and (b) such Project Applicant gives 30 days' written notice of such proposed assignment to the City Manager, and the City Manager approves such assignment in writing, which approval may be withheld if the City Council determines, in its discretion, that the proposed assignee's net worth or other financial resources are not sufficient to fulfill the foregoing indemnity obligation. Provided, however, that with respect to public improvements, this indemnity shall apply only to Indemnified Claims that arise prior to the City's acceptance of the public improvement and the expiration of any maintenance obligations of the Project Applicant, unless the Indemnified Claim (i) arose as a result of a hidden defect in the public improvement; or (ii) arose as a result of direct or indirect action or inaction by Project Applicant, including, without limitation, construction, maintenance or operational activities, prior to the City's acceptance of the public improvement. In the case of the foregoing (i) or (ii), this indemnification shall apply regardless of whether the public improvement has

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been accepted by the City. "Public improvements" include all infrastructure improvements and property customarily accepted and maintained by the City that are offered for dedication to the City and actually accepted by the City, such as streets, sanitary sewer lines and the like. This indemnity shall include, without limitation, payment of all Litigation Expenses associated with any action herein. The Indemnified Parties shall have the right to select counsel to represent the Indemnified Parties, at the Project Applicant's expense, in the defense of any action specified in this Condition of Approval No. 10. The Indemnified Parties shall take all reasonable steps to promptly notify the Project Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these Conditions of Approval.

**A "Defense and Indemnity Agreement" was executed 4/8/04 memorializing the terms and satisfying the requirements of COA #10.*

11. Within 90 (*this time period also being required for the submittal of the PUD doc. in COA 4*) days following the Effective Date, the Project Applicant shall enter into an Indemnification Agreement in a form acceptable to the City Attorney to establish in more specific detail terms and conditions of the Project Applicant's indemnification obligations set forth in Conditions of Approval Nos. 9 and 10. Any failure of any party to timely execute such Indemnification Agreement shall not be construed to limit any right or obligation otherwise specified in these Conditions of Approval, including, without limitation, Conditions of Approval Nos. 9 and 10, except that it shall not limit Development Director authority as set forth in Condition of Approval No. 37.

**A "Defense and Indemnity Agreement" was executed 4/8/04 memorializing the terms and satisfying the requirements of COA #11.*

Compliance with SMARA - Implementation, Security, and Phasing of Project

12. Prior to issuance of a grading permit, the Project Applicant shall obtain an amendment to the current Reclamation Plan that is consistent with the PUD, VTM, these Conditions of Approval and all requirements of the State Mining and Reclamation Act ("SMARA"). This amendment may be obtained from the City.

** In accordance with above the Amended Reclamation plan was approved by the City 4/20/04.*

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Also prior to issuance of a grading permit, the Project Applicant shall provide the City with an acceptably rated bond or bonds, or other form of security acceptable to the City Attorney that will cover all costs of implementing and completing all of the work necessary to fulfill the requirements of the Reclamation Plan, as amended and otherwise to safely provide for residential development. (“the Reclamation Work”). The Reclamation Work includes without limitation the work described in Conditions of Approval Nos. 17, 18, 21, 22, 23, 37, 41 in accordance with all of these Conditions of Approval and the Mitigation Measures described in the Mitigation Monitoring and Reporting Program (“MMRP”) which is attached as Exhibit B to the Resolution to which these conditions are attached. The MMRP is hereby incorporated into and made a part of these Conditions of Approval.

**Acceptably rated bonds covering all the costs noted above have been provided to the City.*

Prior to the issuance of a certificate of occupancy for any unit within the Project (except for model homes) all of the Reclamation Work must be completed; provided, however, that the revegetation work (described in Condition of Approval No. 18) must be commenced at the earliest feasible time in accordance with season planting requirements and may be completed after the first certificate of occupancy is issued, so long as the Project Applicant continues to diligently complete such work in accordance with seasonal planting requirements.

** While not yet applicable DSG has provided to the city all of the Documents and plans described in Conditions of Approval Nos. 17, 18, 21, 22, 23, 37, and 41 in accordance with all Conditions of Approval and the Mitigation Measures. Additionally the Reclamation Work is substantially completed.*

Project Phasing

13. Project Phasing Plan. As used in this Condition of Approval, the term phase or phases refers to phases associated with grading and construction activities, not to the phases identified on the VTM, which are referred to as “VTM Phase.” This Approval is contingent upon the grading, construction and other improvements being completed in accordance with the specific phasing plan established in this Condition of Approval and the City shall retain the full and sole authority to

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withhold further approvals at any juncture if all the requirements for each phase have not been completed as specified in this Condition of Approval. Further, any modifications in the phasing plan shall require prior written approval by the City Development Director and the City Engineer.

**Acknowledged*

Pre-Construction Phase A (Review and Approval of Detailed Plans) – The first phase of the project shall require the applicant to submit all required plans, information, analysis, and other specifications as required for the Reclamation Work, the grading plan, and other related work in accordance with the Conditions of Approval and the MMRP. This work includes:

- a. The geotechnical work as set forth in Condition of Approval No. 22.
- b. The hydrology plans, information and analysis as set forth in Condition of Approval No. 23.
- c. The master public improvement plan as set forth in Condition of Approval No. 35.
- d. The Revegetation Plan and specifications as set forth in Condition of Approval No. 18.
- e. Implementation of the Construction Management and Phasing Plan as set forth in Condition of Approval No. 41, including payment of fees, hiring of independent technical consultants and coordination of project management and monitoring activities as set forth in Condition of Approval No. 40.
- f. Submittal of the Traffic Improvement Program as set forth in Condition of Approval No. 25.
- g. Establishment of the special deposit fund as set forth in Condition of Approval No. 40.
- h. Funding of the GHAD as specified in Condition of Approval No. 24.

Upon successful completion of this phase and approval by the Development Director, the City Engineer and the Building Official (or their designees), the grading permit shall be issued for Construction Phase B (Site Preparation).

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**All of the above plans, requirements, and conditions have been submitted, reviewed, approved, and or satisfied. The Grading Permit was issued 4/23/04.*

Construction Phase B (Site Preparation) – The first physical phase of the Project shall be the grading, earthwork and implementation of the Reclamation Plan Amendment or Site Closure to prepare the site for residential development. Work under this phase includes completion of:

- i. Commencement of Reclamation Work, as defined in Condition No. 12, including, without limitation, grading, slope drainage, and other requirements to ensure the quarry is in a safe and stable condition for residential construction activities.

**This work is substantially complete. Supplementing the submission of this annual compliance report, Berlogar Geotechnical Consultants has also submitted a letter/report dated 10/14/05 itemizing the progress of the grading and compliance with all applicable COA's and the MMRP.*

- j. Completion of slope stability measures for Parcels C-C and the initiation of reconstruction of the slopes in D-D in accordance with subsection g, below.

**The work in parcels C-C and D-D are substantially complete in concurrence with the above. See Berlogar 10/14/05 report.*

- k. Site preparation for residential construction on Lots 1-19 on Campus Drive in compliance with the approved grading and improvement plans set forth in Pre-construction Phase A

** Site preparation for residential construction on Lots 1-19 on Campus Drive is well underway and scheduled for completion spring of 2006.*

- l. Rough roadway improvements and utilities for A Street (entirety) and all of the streets where residential construction is proposed during the first phase of residential construction (Construction Phase C).

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**This work is well underway. Completion is scheduled for later this year.*

- m. Construction of the Gateway Emergency Vehicle Access (“EVA”) (Parcel F-F).

**This work is well underway. Completion is scheduled for later this year.*

- n. Construction of the detention basin (Parcel A-A).

**This work is complete*

Prior to the issuance of building permits for any unit within the VTM Phase I Area and Lots 1-19, the Project Applicant shall submit a geotechnical and engineering report that confirms that all slope stability measures for the western slope (Parcel C-C) and the restored slope (Parcel D-D) have been implemented to the degree necessary to assure site and construction worker safety. This report shall be reviewed by an independent geotechnical engineer hired by the City at the Project Applicant’s expense and approved by the City. Further, implementation of a construction management and site security plan for the VTM Phase I Area shall also be required, as set forth in Condition of Approval No. 41.

**In compliance with the above a report was submitted by Berlogar Geotechnical Consultants and reviewed and approved by Lowney Associates prior to issuance of the first building permits.*

A construction management and site security plan was also implemented as set forth in COA #41.

Upon successful completion of this phase and approval by the Development Director and the Building Official (or their designees), building permits for up to 150 units within the VTM Phase I Area and additional building permits for Lots 1-19 may be issued. Because completion of the specific improvements identified for this phase is critical for public health and safety considerations, provision of security, such as bonds or letters of credit shall not be acceptable as a substitute for completion of such improvements.

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**All requirements of Construction Phase B have been satisfied.*

Construction Phase C (Initial Residential Construction). Work in Construction Phase C shall include construction of up to 150 housing units within the VTM Phase I Area, construction on Lots 1-19 and completion of grading and implementation of Reclamation Plan Amendment (excluding completion of the revegetation plan) as described in Condition of Approval No. 12, as well as:

- o. Completion of the Revegetation/restoration work according to Condition of Approval No. 18 for Parcel C-C, completion of grading and slope stabilization for Parcel D-D, and, to the greatest extent feasible, the initiation and continuation of revegetation of Parcel D-D in accordance with seasonal planting requirements and Condition of Approval No. 18.

**The referenced work is substantially complete in accordance with the above.*

- p. Completion of final street improvements, excluding landscaping, for the entirety of any street adjacent to or providing access to the first 150 units that will be occupied within the VTM Phase I Area. Landscaping associated with such street improvements, including common area, will be completed concurrently with completion of the adjacent residential units; the security for such work is further set forth in Condition of Approval No. 7, with the exception that all landscaping shall be complete for any phase prior to the issuance of the certificate of occupancy for the last two units of that phase.

**Final street improvements within the VTM Phase I Area are substantially complete and the referenced landscaping is underway.*

- q. Landscaping of front entrance (Parcels G-G and H-H) and detention basin (Parcel A), as further set forth in Conditions of Approval Nos. 19 and 23.c, respectively.

**Landscaping of the entrance is complete. Landscaping of the detention pond will be completed in 2006.*

- r. Northwestern supplemental EVA improvements.

**These improvements are complete*

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s. Village Green landscaping and improvements (Parcel E).

**It is not feasible to install this landscaping until adjacent residences are completed. As provided for within these conditions appropriate security will be provided.*

t. EVA connection from H to C Streets.

**Complete*

u. Landscaping of Parcels B, C, D, and J.

**As provided for herein all landscaped areas will be completed as adjacent residences are completed.*

v. When VTM Phase ID is completed, the landscaping and improvements for Parcels G, H and I shall be completed prior to the issuance of certificates of occupancy for the last two units in Phase 1D.

**Acknowledged. Not yet applicable.*

w. Prior to the issuance of any occupancy permits for the first 150 units in the VTM Phase I Area, as well as any of the units on Lots 1-19, the City shall confirm that the Project Applicant has successfully completed all required work under Construction Phase C, including confirmation by the independent geotechnical engineer hired by the City at the Project Applicant's expense that all Reclamation Plan Amendment measures (exclusive of completing the revegetation plan) have been completed as required.

**Acknowledged. Not yet applicable.*

Construction Phase D (Continued Residential Construction). Work in this Construction Phase D includes continued residential construction in the VTM

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Phase I Area and Lots 1-19, construction in the VTM Phase II Area, construction of the Gateway Senior Housing Project (Parcel Z) and construction of Greenly Drive/Edwards Avenue Improvements.

Prior to the issuance of any building permits for VTM Phase II Area, the Project Applicant shall have complied with Condition of Approval 41.

**In accordance with COA 41 a Construction Phasing and Management Plan has been submitted and approved by the City for all work currently underway. Subsequent versions of the Plan have been submitted and approved prior to the commencement of residential construction.*

Per final project approvals the Gateway Senior Housing Project is to be replaced with a passive park.

Prior to the issuance of an occupancy permit for the 151st unit and prior to the issuance of a building permit for the 350th unit (excluding Lots 1-19 on Campus Drive and the Gateway Senior Housing Project), the Project Applicant shall have (i) completed to a standard acceptable to the City and (ii) offered to the City, and the City shall have accepted, the Greenly Drive/Edwards Avenue improvements described in Condition of Approval No. 25 and the MMRP.

**This work has been completed and approved by the City.*

Prior to the issuance of a certificate of occupancy for any unit in the VTM Phase II Area, the following shall be completed:

- x. the Altura supplemental EVA connection and improvements.

**This work is substantially complete.*

- y. EVA connection from I to A Streets.

Because completion of the specific improvements identified in subparagraphs 25a and 25b above for this phase is critical for public health and safety considerations, provision of security, such as an acceptably rated bond, or letters of credit shall not be acceptable as a substitute for completing such improvements.

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**These improvements are complete.*

Construction Phase E (Completion of Residential Construction up and to the 351st Unit). Work in this Construction Phase E shall include completion of residential construction and site work in VTM Phase I Area and Phase II Area, the Gateway Senior Project and Lots 1-19, except that the Project Applicant shall complete and the City shall have accepted the following work prior to the issuance of a certificate of occupancy for the 351st unit (excluding Lots 1-19 and the Gateway Senior Project):

- z. Interior park improvements (Parcel Y).
- aa. All Project trail connections and improvements.
- bb. All remaining street landscaping, revegetation and other open space improvements associated with any of the first 350 units that have received occupancy permits; and specifically excluding improvements adjacent to the remaining 53 units (excluding Lots 1-19 and the Gateway Senior Project).

**Acknowledged. Not yet applicable.*

Construction Phase F (Completion of the Approved Project) – All remaining improvements shall be completed and compliance with Conditions of Approval Nos. 25 and 26 shall be demonstrated to the satisfaction of the City Development Director prior to the issuance of a certificate of occupancy permit for the remaining 53 units.

**Acknowledged. Not yet applicable.*

Project Design Requirements

- 14. The following design refinements, standards and requirements shall be incorporated into the final design plans for the project:
 - a. The design of the Gateway Senior Housing Project shall be revised to be more of a signature gateway design, with high quality materials and

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detailing appropriate to its tall height and prominent location close to the freeway. The design shall incorporate a greater degree of articulation and detailing, including a combination of window recess and trim that creates at least three inches of shadow and articulation. The other major elements of the design to be revised include the roof forms, entry, and overall proportions. The revised design shall be reviewed and approved by the Design Review Committee of the Planning Commission as part of the design submittal required for compliance with Condition of Approval

**As provided in the final approvals of 2/17/04 and the 12/03 Settlement Agreement the Gateway Senior Housing Project has been removed from the overall project and replaced by a passive park and parking area.*

No. 4. b. Four of the retaining walls proposed shall be revised to be closer in compliance with zoning standards for height and distance separation. The following four areas of retaining walls shall be revised such that the maximum height of the walls is eight feet, with at least four feet of horizontal separation between walls

- Retaining wall at the uppermost portion of “A” Street, near the roundabout
- Retaining Wall near the south property line abutting Altura Place
- Retaining Wall along the EVA in Parcel Y, near the cul-de-sac end of “I” Street
- Retaining Wall behind the Gateway Senior Housing on Parcel Z

b. The design of the Community Center shall be revised to be more consistent with the overall design theme and design elements used in other portions of the project. The size of the proposed facility shall not be required to be reduced. The final design shall be reviewed and approved by the Design Review Committee of the Planning Commission as part of the submittal required to comply with Condition of Approval No. 4.

c. The design of the Terrace Buildings, 6-plex buildings, Product 8A, shall be revised. The roof forms and design of the west-facing, downhill side shall be revised to reduce the repetitiveness of the roof forms, and to introduce some degree of asymmetry. It will be acceptable to have the lower three stories of these buildings in one plane to create a more prominent central element that reduces the repetition of roof forms and is differentiated from the roof forms of the fourth and fifth floors above. A gable roof rather than a hip in this area of the façade could be

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incorporated. The revised design shall be approved by the Development Director; if there are issues that cannot be resolved between the applicant and the Director the matter shall be referred for decision to the Design Review Committee of the Planning Commission. The revised design shall be incorporated into the submittal required as part of Condition of Approval 4.

- d. The massing of the Product 6A buildings shall be revised such that at least one unit within these four unit buildings is pushed forward or back in plan so that the garages are not lined up in a row, as follows:
- For lots 231 and 136, push these corner units forward towards the street at least 6 feet.
 - For the buildings with lots 212-215, 160-163, and 148-151, push at least one unit in each of these three buildings downhill at least 4 feet.
 - This requirement shall not apply to the building on lots 204-207.
- e. Product 7 shall be revised and refined to add more design variety in the following manner, to a level of design variety comparable to that of Product 6:
- Vary the siding material for different units
 - Vary the roof lines for different units and/or different buildings
 - Vary the porch railing designs
 - Vary the design of the entry roof forms
 - Vary the design of the arched design elements at the garage entrances
- f. The siding materials of Products 6 and 7 on “I” and “J” Streets shall be revised and refined to include more of a mix of stucco and siding within each building, rather than alternating buildings of stucco and siding.
- g. For Products 1, 2, 5, 6, and 7, the end units of the buildings at the ends of the blocks (both downhill and uphill units) shall be revised to include more windows, and a significantly greater degree of articulation through the use of elements such as bay windows, entry porches, etc.
- h. A special inspector shall be hired at the applicant’s expense to verify compliance with all building heights shown in the approved plans for all building types. The inspection shall occur at the completion of the framing stage of construction, prior to installation of building siding. The inspector shall be a surveyor or other licensed professional, and shall verify in writing to the City that the buildings constructed do not exceed the heights shown on the approved plans referenced in Condition of

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Approval 1. This special inspector shall be identified in the Construction Phasing and Management Plan required by Condition of Approval 41.

- i. The height of the Product 5 buildings shall not exceed 40 feet, as measured per the zoning code standard method from finished grade to top of roof.
- j. The height of Product 1, Phase I Downhill Condos, shall be revised and reduced to conform to the drawings submitted on October 14, 2002, entitled 6/7 – Plex Condos, Product, Section.
- k. The final site plan shall provide for a minimum of 10 feet from the back of the sidewalk to the face of the buildings of the Product 4 Village Green units, in all conditions where the buildings front on streets.
- l. Product 4B of the Village Green units shall be revised as follows:
 - On the left side of the buildings (as viewed in the elevations), a planter box shall be added in front of the garage wall to add articulation to the façade, such planter box to be a minimum of three feet tall and 2.5 feet deep.
 - On the right side of the buildings (as viewed in the elevations), a planter box shall be added in front of the garage wall to add articulation to the façade, such planter box to be a minimum of three feet tall and 2.5 feet deep; and a bay window shall be added in the first floor living room projecting forward of the main façade at least 2.5 feet.
- m. For Products 1 and 2, Phase I uphill and downhill units, the entry stoops and steps of the units shall be revised such that they project forward of the front plane of the garage structure two to four feet, and such that the entry arch or awning also extends forward of the main plane of the façade, covering the stoop.
- n. The following detailed requirements and specifications for all of the following features shall be incorporated into the “PUD Design and Specification Document for the Leona Quarry Project”. This document shall be reviewed and approved by the Design Review Committee of the Planning Commission, with the benefit of the recommendations of the Development Director:
 - *Retaining Walls:* The design of all the retaining walls shall be constructed of attractive quality materials, and shall have landscaping planted at the base to minimize the visibility and height of the

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retaining walls when they are located in a location visible from public streets. Basic concrete block will not be an acceptable material. The retaining wall at the top of "A" Street shall be of the highest quality material because there is no landscaping immediately in front of the wall.

- *Garage Doors and Entry Doors:* The design and color of the garage doors and entry doors shall be varied throughout the project, and there shall be a variety of designs and colors within each Product Type.
- *Driveway Surfaces:* All driveways shall be colored to be in the darker tone range, to reduce the prominence of the paved surfaces within the streetscape area. The use of stamped concrete is strongly encouraged.
- *Uphill Driveways:* For all driveways serving townhouses on uphill lots (specifically on "I", "J" and "B" streets, where such driveways are on-grade driveways, twenty percent of the 16 foot by 20 foot driveway area shall be pervious surface.
- *Exterior Material for all Product Types using Siding:* Hardiplank or equivalent siding, in 4, 6, and 8 inch sizes. Hardiplank or equivalent should have a maximum of 8 inches of exposure.
- *Exterior Siding Finishes for Stucco:* Stucco finishes shall be specified for all product types.
- *Window Types:* Milgard vinyl windows or equivalent as a minimum standard of quality throughout the project. Wood windows or vinyl-clad wood windows may also be used.
- *Window Recess and Trim Details:* For all windows in Products 1, 2, 3, 4, 5, 6, and 7, dimensions of window recess and trim shall be at least of the minimum dimensions specified in the drawing dated 10.14.02 and entitled "Alt. Window Head/Sill Trim Siding (Single Hung Typ.)" The general parameter established in this drawing which shall be a requirement is that there shall be a minimum of 3 inches of articulation created by a combination of window recess (face of window to face of siding), and trim projection (face of trim to face of siding). The same parameter shall apply to the stucco buildings of Product 8 (Terrace Units). However the details shall be developed specific to that Product Type, and may include recessed surrounds in lieu of trim.
- *Roof Materials:* Specified as composition shingle, of a quality and depth equivalent to Landmark TL by Certainteed. Concrete tiles may also be acceptable, to be reviewed and approved by the Design Review Committee of the Planning Commission.
- *Railings:* Minimum dimension of 2 inches by 4 inches (nominal dimensions) for the main members and 2 inches by 2 inches (nominal dimensions) for pickets. Specify wood railings for stucco buildings.

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Metal railings can be used in some of the shingled buildings or shingled parts of buildings.

- *Exterior Colors:* Windows shall be a sand or beige color, not white. Colors shall be as shown in the colored renderings shown in the Plans described in Condition #1, and as shown in the Primary and Secondary colors submitted in the color board. The tertiary colors shown on the color board are not approved for use.
- *Master Sign Program:* A master sign program for the site shall be submitted, including all project identification and directional signs, temporary real estate sales signs and/or banners and street signs, and other signs for the site.
- *Lighting Plan:* The Project Applicant shall implement Mitigation Measure 3a as set forth in the MMRP by submission of a lighting plan for each phase of development to the Department of Building Services for review and approval, prior to issuance of the first building permit for each phase of the project. **(MM#M.3a)**

**All of the above Project Design Requirements have been revised, resubmitted and approved as required by the City of Oakland Planning Commission Design Review Committee 3/24/04. Other requirements are/will be met on an ongoing basis.*

Mitigation Measures Part of Conditions of Approval

15. All Mitigation Measures in the EIR as deemed to be required in the Environmental Findings shall be considered conditions of approval for the project, as may be further refined and/or clarified by this Approval, including the refinements and clarifications set forth in these Conditions of Approval. Implementation of the Mitigation Measures shall be adhered to in accordance with the MMRP. The MMRP identifies the time frame and responsible party for implementation and monitoring of each measure, as modified by this Approval. Overall monitoring compliance with the mitigation measures will be the responsibility of the Development Director or his or her designee. Each of the improvements identified in the MMRP shall be implemented at the Project Applicant's sole cost and expense (except where only a fair share contribution is required as set forth in the MMRP or these Conditions of Approval) or secured with a subdivision improvement agreement, or similar financial assurance, acceptable to the City.

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**Acknowledged and in compliance. See weekly reports of Berlogar, and WRA. See annual reports of Berlogar, WRA, and Balance Hydrologics. Also see submitted noise, dust and runoff monitoring data/reports regularly submitted. In addition the City has hired a number of independent consultants at DSG's expense. These consultants have also submitted separate regular reports of their concurrence to the City.*

Air Quality Measures

16. The Project Applicant shall implement all of the mitigation measures described in "Section A. Air Quality" of the MMRP. The Project Applicant shall reduce NOx emissions to no more than 80 pounds per day by reducing motor vehicle emissions. Implementation of the Project pursuant to this Approval reduces the NOx emissions to less than 80 pounds per day and therefore satisfies Draft EIR Mitigation Measure A.2. No further reduction in units to reduce emissions is required. However, the Project Applicant will further reduce motor vehicle emissions by developing a plan that incorporates one or more of the BAAQMD mitigation measures for motor vehicle emissions set forth in Mitigation Measure A.2a as set forth in the MMRP in order to reduce cumulative air quality impacts identified in Draft EIR Impact A.4 (MM #A.2), which shall include funding the furnishing, installation, maintenance, repair and replacement of a new bus shelter to be located on a public sidewalk within the development in a location approved by AC Transit prior to the issuance of a certificate of occupancy for the first residential unit. This condition shall be coordinated with the City Public Works Agency.

**While DSG has reduced NOx emissions to less than 80 pounds per day by reducing the number of units, motor vehicle emissions will be further reduced in accordance with the above. A bus stop location and configuration has been approved by AC Transit as shown on the Improvement Plans and will be provided and maintained as indicated.*

Biological Resources Protection Measures

17. The Project Applicant shall implement all of the mitigation measures described in "Section B. Biology" of the MMRP. The Project design includes the creation of 37 acres of suitable Alameda Whipsnake ("AWS") habitat (**MM #B.3a**). Condition of Approval Nos. 18 and 19 pertain to the specific requirements of the required revegetation and landscaping plans and Condition of Approval No. 32 pertains to the required conservation easement for the open space areas, which

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includes the approximately 37 acres of newly created AWS habitat. The conservation easement shall be recorded prior to or concurrently with recordation of the last Final Map for the Project.

**All mitigation measures described in "Section B. Biology" of the MMRP are being implemented. The required conservation easement for the open space areas is shown on all submitted and or recorded final maps.*

18. The Project Applicant shall prepare and implement a Revegetation Plan approved by the City, substantially consistent with the plan prepared by H.T. Harvey and Associates entitled "Conceptual Revegetation Plan for Reconstructed Slope", dated August 23, 2001 and consistent with the City's Tree Protection Ordinance. As required, the plan shall include the portions of the slopes along the western side of the Project that are presently denuded (Parcels C-C and D-D). Implementation of this plan must comply with the MMRP (**MM #B.10a and E.3a**). This plan shall be implemented within the time provided in Condition of Approval No. 13.

**In compliance with the above a final Revegetation Plan by H.T Harvey dated 4/16/04 was submitted, reviewed and approved by the City. Implementation of this work is to begin this fall and is scheduled to be completed in 2006.*

Landscape Plan Requirements

19. The Project Applicant shall prepare and implement a Landscape Plan substantially consistent with the Landscape Plan prepared by Bradanini & Associates, plans dated October 8, 2002 sheets L-1 through L-13 and ensure the standards set forth in the MMRP (**MM #B.10b and MM E.3a**) are met. A schematic master landscape plan shall be prepared for VTM Phase I and II Areas and adjacent areas, as applicable (excluding the Senior Gateway Housing and Lots 1-19), and shall be submitted to the Development Director for review and approval prior to the issuance of the building permits for the models. This plan shall include:
 - a. Complete soils information, including soil preparation and amendment specifications, soil particle size for existing site soils and imported soils, representative soils and water table tests confirming the suitability of the site for the plant materials selected.
 - b. Detailed plans for the corner of Mountain Boulevard and "A" Street to assure adequate buffering and screening of the parking area or Gateway Senior Project.

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- c. Retaining wall design and details, based on the requirements in Condition of Approval 14.
- d. Details for transitions between natural and more cultivated areas.
- e. Details and specifications for other landscaping features such as street furniture, rocks, and, in accordance with subsection h, any water feature along A Street.
- f. Design and specifications for the public pathways throughout the site.
- g. Design of the park, tot lots and other recreational features, as follows;
 - Leona Park: approximately 2 acres including a 15,000 square foot open lawn area providing play space for volleyball, Frisbee and a small soccer field; a 1,600 square foot active play area for 6 to 10 year olds. The play equipment will include climbing structures, slides and tire swings. A tree shaded gathering place, including picnic tables will also be included near the tot lot.
 - All play surfaces and play structures throughout the development will comply with ADA standards.
 - Village Green: This feature in the center of the Phase One Condominiums will include low, 30 inch stone walls that will form two, 10 foot wide terraces stepping up to “C” Street, planted with shaded trees. The stone terraces, along with an approximately 28,000 square foot open lawn area will provide an informal gathering place. Adjacent to the lawn area is an approximately 2,500 square foot tot lot play area for children 1-5 years old, including interactive play equipment promoting gross motor skills. A pathway will encircle the play area with a 5 foot stone wall along one edge; this feature will also include a built in fort-like structure with sculptural elements for climbing and play.
 - “J” Street Play Area: This approximately 2,800 square foot area is crescent shaped and will be cut into the uphill slope of the site. A rock climbing wall approximately 6 feet high will be included in the design, along with a bicycle or mini-skateboard ramp for active recreation for ages 10 – 18.
 - “K” Street Greenway Park: This feature is an approximately 1,050 foot lineal greenway along upper “K” Street. It will include a lawn and tree shaded area for passive activities, along with a series of par-course exercise stations along a 5 foot wide meandering pathway, with periodic bench seating areas.

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- “K” Street Open Space: This feature is an area of approximately 2,500 square feet within two level terrace spaces for passive recreation. An overhead shade trellis with bench stations will be included in the design.
 - Water Detention Basin Area: A 10 foot wide crushed granite pathway around the basin will be constructed around the water detention basin at the base of the site, including par-course stations that are linked with other stations in the development.
 - Par-course: A series of par-course stations will be located throughout the lower development area.
- h. At the option of the Project Applicant the water features shown on sheets S-1, L-1 and L-12 shall be implemented. A feasibility study for the water feature shall be prepared before the Project Applicant proceeds with such water feature.
- i. Prior to the issuance of a building permit for any unit in a phase within the VTM Phase I and II Areas, a final landscape plan shall be submitted for that phase, based on the results, requirements, information and recommendations contained in the master schematic plan, and including but not limited to the following:
- Detailed irrigation plans, consistent with Sustainability Measure Condition No. 38 b. Planting details such as location, number and sizes of the plant materials and the specifications for planting.
 - Street trees shown in all landscaped pockets between driveways as shown on the site plans dated October 8, 2002, sheets L-1 through L-7.
 - Specifications for driveway, motor court and other hard slope areas, paving and other surface treatments.
 - Detailed landscape and improvement plan for the Village Green area.
 - Landscape plan and other details for the sloped areas between the buildings that meet all City requirements for tree planting on downhill slopes below single family homes.
 - A detailed landscape maintenance plan for each phase, including short and long term plant and tree care, irrigation system maintenance and other information to assure that the landscape plan will be successfully established.

Both the master schematic plan and each successive final landscape plan shall be independently reviewed and approved by a qualified landscape architect and other professional consultant, as deemed required by the Development Director, at the

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Project Applicant's expense. These plans shall comply with Mitigation Measure B.10a as set forth in the MMRP.

** In compliance with all the above, A Master Landscape Plan has been submitted and approved. The required more detailed Landscape Plans have also been submitted and approved for and with the first phase of building permit applications prior to issuance of building permits in June of 2005.*

20. Prior to the issuance of an occupancy permit for the units in each phase of the Project, the Project Applicant shall enter into a two year landscape maintenance agreement with the City, subject to the review and approval of the City Attorney, running from the date the landscaping is deemed complete and in compliance with the approved landscape plan for each phase as set forth in Condition of Approval 13. The security posted shall be in the form of an acceptably rated bond, cash, an irrevocable letter of credit or a certificate of deposit, and the amount shall be determined based on the contract costs of plants and installation plus 25 percent.

**Acknowledged. Not yet applicable*

21. The Project Applicant shall prepare and implement a Tree Protection Plan consistent with the City's Tree Protection Ordinance that avoids construction-related impacts to protected trees outside of the construction in accordance with Mitigation Measure B.10c as set forth in the MMRP. **(MM #B10.c)** The Project Applicant may remove trees within the construction area provided that the Project Applicant has prepared a revegetation plan that is in compliance with the City's Tree Protection Ordinance and incorporates all of the mitigation measures that mitigate for the removal of protected trees as set forth in Mitigation Measure B.10a. **(MM #B.10a)** This plan shall be made a part of and implemented simultaneously with the Revegetation Plan required in Condition of Approval No. 18.

**A Tree Protection Plan and Tree Removal permit in accordance with above was approved 2/04.*

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Geology, Seismicity, and Mineral Resources

22. The Project Applicant shall implement all of the mitigation measures described in “Section D. Geology, Seismicity, and Mineral Resources” of the MMRP. All geotechnical reports and recommendations submitted in accordance with final grading and construction specifications shall incorporate the information, standards, and requirements required in that section. **(MM # Measures D.1.a., D.2.a., D.3.a through d., D.4.a., D.5.a., D.6.a. and b.).**

In addition, the final grading plans and specifications submitted for the site shall include the following information, analysis, requirements and standards:

- a. For the areas along the western slope (Parcels C-C and D-D) potentially subject to wedge failures and debris slides, an estimate of the size of the storage area required, if applicable; mechanisms for accessing the storage area and/or cleaning debris or removal of debris, including a discussion as to whether off-haul or on-site storage is more appropriate.
- b. Information, design and specifications of a permanent drainage system for the western slope area (Parcels C-C and D-D).
- c. A specified performance standard that there be no overspill of debris from the western slope area (Parcels C-C and D-D) onto H Street unless unusual events occur (i.e. seismic activity).
- d. The completion and results of a perched water table study, along with recommendations pertaining to the findings of the study, as deemed necessary.
- e. Specifications that subdrains within the project site be surveyed and mapped utilizing a standard civil engineering method and employing site elevation and x-y ground coordinates under the California coordinate system.
- f. The specifications for the piping material for the subdrains to be used along with an analysis that the specifications used are rated for the degree of overburden material anticipated.
- g. An evaluation of the chemical content within the water in the water table at the site to determine whether salt precipitation may be a long-term problem, along with the degree to which other substances may cause pipe corrosion such as carbonates, magnesium, silica, calcium or sulfates. This evaluation should include any recommendations for the specifications of

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the pipes used in the drainage system to avoid or mitigate potential corrosion.

- h. The design of the drainage system shall include redundancy so that each level of subdrains beneath the level of fill has multiple discharge points.
- i. An analysis of the structural requirements and design specifications to mount the solar panel system required by Condition of Approval 38.
- j. Provisions for an inspection, monitoring, and maintenance process throughout the course of grading, construction and post construction to assure that the geotechnical requirements, standards and recommendations are being implemented properly.

Prior to the issuance of a grading permit for the site, the plans, information and analysis required by this Condition of Approval shall be independently reviewed by a qualified geotechnical engineer hired by the City at the Project Applicant's expense and approved by the City Engineer.

**In response to and in compliance with the above Berlogar Geotechnical submitted a three volume report dated 5/15/03 which was independently reviewed and approved prior to the issuance of the Grading Permit 4/23/04. This report was reviewed by three independent geotechnical engineers. In addition see attached annual compliance letter/report by Berlogar.*

Hydrology and Drainage Requirements

- 23. The Project Applicant shall implement all of the mitigation measures described in "Section F. Hydrology and Water Quality" of the MMRP. Final grading and improvement plans for the Project shall include the following information, analysis and requirements:

**DSG has substantially completed all of the mitigation measures described in "Section F. Hydrology and Water Quality" of the MMRP. Final grading and improvement plans for the Project along with supporting reports include all the requirements noted.*

- a. A master site drainage and grading plan that: (i) incorporates one of the following detention basin system, (ii) meets the published design criteria

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set forth in the Alameda County publication entitled “Hydrology and Hydraulics Criteria Summary for Western Alameda County” (1989), using the parameters recommended by PWA as set forth in the SEIR, including the parameter that existing ponds shall be considered empty at the onset of the design storm, and (iii) is consistent with the information, standards and requirements as set forth in the MMRP (**MM #s D.6a, D.6b, F.1a and 1b, F2.a and F2b, F.3a, F.4a and 4b, F5.a**).

**Improvement and grading plans incorporate the single basin alternate B below in conformance with the above and as reviewed and approved by PWA including the parameter that existing ponds shall be considered empty at the onset of the design storm.*

- Two-Basin Alternate A: The Project Applicant sponsor shall construct a stormwater management system, that includes a 15.6 acre-foot lower detention basin and outlet works, capable of maintaining peak flows from the 24-hour, 25-year design storm at or below pre-project levels, and not fail structurally during a 100-year storm, as determined using the parameters resulting from the consensus process discussed in the SEIR. The basin shall be lined with an impermeable material to minimize leakage and contributions to local groundwater flow. The stormwater management system reviewed in the SEIR, with the 15.6 acre-foot lower detention basin, meets these performance standards. A surface drainage swale shall be constructed along the base of the western-most external berm slope of the detention basin to capture surface water runoff from the berm and convey it to appropriate storm water outlets.

The Project sponsor shall also modify the existing Ridgemont Sub-watershed pond (Pond 4) by installing an emergency spillway. Improvements to the Ridgemont pond outflow structure shall include the following, or design elements that achieve an equivalent discharge rating curve using the parameters resulting from the consensus process discussed in this SEIR equivalent to that achieved by the following elements: replacing the existing 30-inch outlet pipe with a 42-inch outlet pipe, adding a single drop box with one rectangular orifice, and constructing an appropriate emergency spillway. The perimeter of the drop box would be comparable to a 36-inch riser and the rectangular orifice would be 2.75 feet by 2.0 feet in size. The replacement of the outlet pipe shall be consistent with standard engineering practice. A

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geotechnical evaluation of the existing detention basin levees and proposed modifications shall be completed to assess the overall integrity of the pond and recommendations from the evaluation shall become part of the Project design and be implemented as directed by a registered geotechnical engineer.

**Not Applicable. Single Basin Alternate B below applies.*

- Single-Basin Alternate B: The Project sponsor shall be required to construct a stormwater management system that will maintain peak flows from the 24-hour, 25-year design storm at or below pre-project levels, and not fail structurally during a 100-year storm, as determined using the parameters resulting from the consensus process discussed in the SEIR. The basin shall be lined with an impermeable material to minimize leakage and contributions to local groundwater flow. The stormwater management system reviewed in the SEIR, with a single 20.3 acre-foot lower detention basin, meets these performance standards. A surface drainage swale shall be constructed along the base of the western-most external berm slope of the detention basin to capture surface water runoff from the berm and convey it to appropriate stormwater outlets. The Project sponsor shall also modify the existing Ridgemont Sub-watershed pond (Pond 4) by installing adequately sized, flow-through pipe system to minimize the detention capabilities of that existing pond.

**The final design more than adequately meets the above criteria. Via the Settlement Agreement of 12/03 DSG committed to implement 25 acre-feet of detention capacity in the single lower basin. PWA approved the most effective use of the extra capacity, which is incorporated into the final design. The basin is lined with an impermeable material and the Ridgemont pond is not counted in the detention capacity. A drainage swale is designed along the outside of the lower basin.*

- b. The Project Applicant shall meet the revised Clean Water Act requirements as established by the Regional Water Quality Control Board (“RWQCB”) in the most recent version of such requirements or, if approved as of the date the grading permit application is filed, any final

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version of such requirements. The detention basin shall meet the new Alameda County NPDES permit provision C3 requirements.

**The final design of the storm system and detention basin incorporate the latest available versions of the above requirements at the time the Grading permit was issued.*

- c. The final plan for the detention basin (Parcel A) shall incorporate: detailed landscaping and other specifications so that a water treatment area can be established within the basin including a planting plan based on the recommendations of a qualified hydrologist and biologist regarding contours that can support the proposed planting and not interfere with the design and detention capacity.

**The landscape plans dated 10/4/04 include the above requirements in concurrence with the HT Harvey Recommended Planting Palette memo of 2/26/04.*

- d. Other specifications for the detention basin (Parcel A) shall also be provided, including measures for sediment storage, design of fencing, access, and clean out and maintenance specifications, liner monitoring specifications and repair procedures. The liner monitoring specifications and repair procedures shall be prepared by a registered geotechnical engineer with expertise in impermeable liner design, construction and maintenance.

**The design shown on the approved plans show the required access, fence, and sediment storage. As prescribed the liner materials were specified by Berlogar Assoc. and tested for conformation prior to installation. The "Water Quality/Detention Pond Monitoring and Maintenance" plan by Engeo 8/2/2004 addresses the long term monitoring and maintenance required.*

- e. The site drainage plan shall include detailed measures to detain storm water run-off to the maximum feasible degree, given geotechnical and other constraints through infiltration opportunities, bio-swales or grassy swales, and creating a vegetated swale in the Village Green area.

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**See response to 23a above. Additionally, there will be a vegetated swale at the Village Green.*

- f. A hydrologic review and confirmation of seasonal wet weather conditions for conveyance of the storm water.

**See 23a above*

- g. A review and recommendations pertaining to the creation of a perennial creek through the site that drains into the lower detention basin, consistent with condition of Approval No. 19.

** A "dry" creek landscape feature will be incorporated alongside A Street. As shown in Berlogar Geotechnical Consultant's letter of 10/2004 an actual perennial creek through the site is infeasible.*

- h. A geotechnical investigation, including soil borings as necessary, of the stability of the detention basin (Parcel C-C). The investigation shall be prepared by a geotechnical engineer and shall evaluate the existing berms and consider the planned permanent use as a detention basin, the modified outlet works required for that function, and protection measures against overflows. The geotechnical review shall also analyze the permeability of the basin and make recommendations for modifications needed to meet stability, permeability and functional needs.

**An investigation was prepared in conformance with the above. See Berlogar report of May 15th 2003. It was determined not utilize the Ridgmont basin for detention capacity purposes.*

- i. Applicant shall fund the cost to prepare detailed construction documents and all construction costs to redirect existing storm drainage in Ridgmont Drive away from the Leona Street basin and to connect it to the Project's drainage system.

**DSG has provided the full cost of the above to the City.*

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- j. Provisions for an inspection, monitoring, certification and maintenance process throughout the course of grading, construction and post construction to assure that the approved drainage plan and other measures are functioning properly.

**The City has provided a nearly full time inspector as well as regular inspections by various staff from Public Works, Environmental and Planning Departments all at DSG expense. Berlogar has provided (sometimes multiple) full time inspectors. Balance Hydrologics, Engeo Inc. and PWA have also inspected the installation of improvements to assure that the approved drainage plan and other measures are installed as designed and functioning properly.*

Prior to the issuance of a grading permit for the site, the plans, information and analysis required by the preceding Condition of Approval shall be independently reviewed by a qualified hydrologist and/or engineer hired by the City at the Project Applicant's expense and approved by the City Engineer.

**PWA provided the independent review required above at DSG's expense prior the issuance of the grading permit 4/23/04.*

Geologic Hazard Abatement District Requirements

24. Prior to and at the time of recordation of the first final map for the project, a Geologic Hazard Abatement District (GHAD) shall be fully operational, and all assessments, reserve funding and/or other long-term financing and other requirements necessary to fully fund the GHAD shall be established and authorized. If at any time the GHAD is dissolved or is otherwise unable to adequately perform specified functions, the Development Director may exercise his or her authority under COA 37. The GHAD Plan of Control shall specify, without limitation, that:

**The GHAD was fully established 12/02. An amendment to the GHAD annexing additional properties owned by the applicant and further detailing operational aspects of the GHAD was approved in December, 2004.*

- a. The GHAD will assume responsibility for the long-term maintenance of the slopes, all drainage facilities (including the detention basin) and all

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other surface and sub-surface stormwater runoff and drainage system improvements and maintenance, including street cleaning, within the Property.

**Acknowledged and as to be implemented. See Plan of Control and Engineers Report dated August 13, 2004.*

- b. The GHAD shall also maintain the open space areas, which include newly created areas of potential AWS habitat; providing minimal disturbance to such areas. The GHAD's regular maintenance activities shall act as fire protection and control through vegetation management in the semi-natural, Restored Slope Area of the site, erosion control and trail maintenance.

**Acknowledged and as to be implemented. See Plan of Control and Engineers Report dated August 13, 2004.*

- c. A reserve fund shall be established in the GHAD budget to provide for restoration, maintenance, repair or other work associated with a catastrophic event, such as a landslide or detention basin bank failure.

- d. The applicant shall provide start-up funds for the GHAD in an amount to be determined by the City Engineer in accordance with the approved plan of control for the GHAD, which shall be no later than recordation of the first final map for the Project. The Project Applicant shall also assume financial responsibility for all geotechnical related work for a period of time determined by the City Engineer, such as the implementation of an initial set of site monitoring measures for moisture, lateral movement and vertical movement, including installation of piezometer(s), settlement pins and inclinometer casings. The City Engineer shall determine the specific monitoring measures that will be installed, and such measures shall be installed, to the satisfaction of the City Engineer, by the Project Applicant for a time certain.

**Start up and reserve funds are provided via DSG providing all operational costs for the GHAD for a period of 2 years. During this time all GHAD assessments collected will be kept within the GHAD. Through these assessments and provisions of start up funds the GHAD will be able provide for restoration, maintenance, repair or other work associated with a catastrophic event, such as a landslide or detention basin bank failure.*

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- e. The GHAD shall include both on going maintenance activities as well as a plan for unexpected maintenance and event, including events or damages that could occur off-site as the result of site improvements associated with geotechnical, drainage or related matters within the GHAD jurisdiction. This work shall be based on the results of the minimum monitoring period, the final grading and specifications for slope restoration and repair on Parcels C-C and D-D and the results of the geotechnical information and analysis set forth in Condition of Approval No. 22.

**Acknowledged and as to be implemented. See Plan of Control and Engineers Report.*

- f. The GHAD budget shall separately identify the projected costs associated with (1) geotechnical/slope stability maintenance work; (2) drainage facilities (including detention basin) operation and maintenance; (3) storm water quality maintenance and monitoring; and (4) reserve fund

**Acknowledged and as to be implemented. See Plan of Control and Engineers Report.*

- g. The Project Applicant shall fund an independent, qualified engineer to serve as the GHAD manager for the GHAD. The GHAD shall provide the name, phone number and mailing address of the GHAD manager to all residents within the property covered by the GHAD.

**Acknowledged and as to be implemented. See Plan of Control and Engineers Report dated August 13, 2004.*

- h. The GHAD shall submit an annual report to the City Public Works Director and the Executive Director of the Community and Economic Development Agency detailing (1) its efforts to satisfy the monitoring and reporting requirements specified in the Plan of Control; (2) budgetary and other financial information relevant to the GHAD's operations.

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**Acknowledged and as to be implemented. See Plan of Control Amendment and Engineers Report dated August 13, 2004.*

- i. The GHAD shall defend, hold harmless and indemnify the Indemnified Parties (as that term is defined in Condition of Approval No. 9) and their insurers against any and all liability, damages, claims, demands, judgments, losses (“Indemnified GHAD Claims”) or other forms of legal or equitable relief related to the formation and operation (including, without limitation, maintenance of GHAD-owned property) of a Geologic Hazard Abatement District (“GHAD”) and in the case of the City Council members, actions taken by said members while acting as the GHAD Board of Directors. This indemnity shall include, without limitation, payment of all litigation expenses associated with any action herein. The Indemnified Parties shall have the right to select counsel to represent the Indemnified Parties, at the GHAD’s expense, in the defense of any action specified in this Condition of Approval No. 24(j). The Indemnified Parties shall take all reasonable steps to promptly notify the GHAD of any claim, demand, or legal actions that may create a claim for indemnification under these Conditions of Approval. Within 90 days of formation of the GHAD, the GHAD shall be required to enter into an Indemnification Agreement in a form acceptable to the City Attorney to establish in more specific detail the terms and conditions of the GHAD’s indemnification obligations set forth herein. Any failure of any party to timely execute such Indemnification Agreement shall not be construed to limit any right or obligation otherwise specified in these Conditions of Approval except that it shall not limit Development Director authority as set forth in Condition of Approval No. 37.

**So provided in letter of April 8th 2004. Also see response to COA #9, #10, and #11*

- j. The GHAD shall obtain general liability insurance and directors’ insurance for the GHAD Board of Directors to the extent that the GHAD Board determines in its sole discretion that such insurance is available at commercially reasonable rates. In the event subsidence insurance becomes available, the GHAD also shall obtain such insurance provided that the GHAD Board of Directors determines that the premiums for such insurance are a prudent expenditure of the GHAD’s financial resources.

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**Acknowledged*

- k. The assessments authorized for the GHAD must be determined by the GHAD Board following a thorough financial analysis and must include adequate funding for the indemnity and insurance obligations set forth in this Condition of Approval No. 24. The GHAD's attorney and the City's attorney shall also review the adequacy of the funding for the indemnity and insurance and may make recommendations regarding such funding.

**Acknowledged*

- l. The GHAD will be responsible for hiring its own staff (or contracting with non-City parties to perform such staff services), including all workers who will undertake operation, maintenance, replacement, repair and other activities of the GHAD, and no City employees, including employees of the City Attorney's office, shall perform such services for GHAD facilities and improvements. Further, the City shall not fund or otherwise administer any of the GHAD's operations, property or facilities.

**Acknowledged and as to be implemented. See Plan of Control Amendment and Engineers Report dated August 13, 2004.*

Transportation, Circulation, and Parking

25. The Project Applicant shall implement all of the mitigation measures described in "Section K. Transportation, Circulation and Parking" of the MMRP. The Project Applicant shall prepare and submit to the City for its approval a Traffic Improvement Plan for all traffic improvements that are to be funded by the Project Applicant pursuant to Mitigation Measures K.2a, K.2b, K.2c, K.2f, K.6a as set forth in the MMRP. The plan shall be prepared in accordance with the MMRP and shall, among other items, include a schedule for obtaining Caltrans' approval, where needed, as well as a schedule for completing such improvements. For purposes of the schedule, the applicant shall comply with Condition of Approval 13 for the completion of these improvements.

**Acknowledged. A traffic improvement plan has been submitted and approved.*

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As set forth in the MMRP and refined below, the plan shall include the following improvements:

- a. The Project Applicant shall install traffic signals at the unsignalized intersection of *Edwards Avenue / I-580 westbound on-ramp – Mountain Boulevard [1]*, to reconfigure traffic lanes on Edwards Avenue between the I-580 eastbound off-ramp and Mountain Boulevard, and to widen the freeway on-ramp to provide two lanes **(MM #K.2a)**, including the installation of traffic signals at the unsignalized intersection of *Edwards Avenue / I-580 eastbound off-ramp [2]* **(MM #K.2b)**. The Project Applicant shall be responsible for making necessary geometric changes on Edwards Avenue, improvements to the Burckhalter Park access driveway, (along with improvements to the parking lot and adjacent areas such as the existing pathway), Mountain Boulevard and the I-580 on and off-ramps to accommodate the projected traffic increases, along with incorporating an interconnection between the two new signals and the existing signal at the Edwards/Greenly intersection and providing lighting under the I-580 overpass. The Project Applicant shall work in good faith with both the City and Caltrans to maintain the existing sidewalk and on-street parking along the south side of Edwards by concurrently analyzing the feasibility of a three-lane rather than a four-lane configuration for this improvement, with a final confirmation through a traffic assessment performed by a traffic engineer hired by the City at the Project Applicant's expense that the three-lane configuration provides an equivalent level of mitigation pursuant to CEQA Guidelines Section 15126.4 (a)(1)(B).

**DSG is well underway with implementation of the above traffic improvements in accordance with the above. The completion of these improvements is scheduled for December 2005.*

- b. The Project Applicant shall restripe Edwards Avenue to provide a separate westbound left-turn lane at *Edwards Avenue / Greenly Drive [4]*. **(MM #K.2c)**. The left turn lane shall be 50 feet in length with a 60-foot bay taper. All above ground utilities, guardrails, signs and other objects shall maintain a minimum 2-foot clear from the face-of-curb within the widened section of Edwards Avenue and Greenly, as well as maintaining the width of the existing sidewalks. The changes shall be designed such that passenger cars can make the right turn maneuver from Greenly Avenue (northbound) to Edwards Avenue (eastbound) efficiently without encroaching into the opposing lane of travel. The final design shall also

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be such that buses may make the right turn maneuver from Edwards (eastbound) to Greenly (southbound) efficiently.

**This work was completed in September of 2004.*

- c. The Project Applicant shall install traffic signals at the unsignalized intersection of *Mountain Boulevard / I-580 westbound off-ramp – Sanford Avenue [8]*, and convert the right lane of the two-lane freeway off-ramp from an exclusive right-turn lane to a shared left-turn/right-turn lane. **(MM #K.2f)**

** DSG was well underway processing the above traffic improvement plan approvals through both the City and Caltrans in 2005 when indicated that they will not allow the above improvements to be installed until traffic signal warrants are met. The traffic analysis does not forecast these signal warrants to be met until project build out and possibly well beyond. The applicant is seeking assistance from the City of Oakland to persuade Caltrans to allow the implementation of these improvements or otherwise to relieve the applicant of this condition of approval.*

- d. The Project Applicant shall construct the project site's main EVA via a 25-foot-wide, "Gateway EVA", connecting the Project site's new roadway network at "A" Street to Mountain Boulevard, and the supplemental emergency accesses to Altura Place and Leona Street pursuant to Mitigation Measure K.6a as set forth in the MMRP. **(MM #K.6a)**

**These improvements were completed in accordance with the above in 2005.*

Prior to implementation of these improvements, the Project Applicant shall submit final design plans and other specifications to the City and any other responsible agency, for their review and approval, including a traffic management and detour plan to be implemented during construction of the improvements. At the City's discretion, an independent traffic engineer shall be hired at the Project Applicant's expense to assist the City in their review process.

** See responses to 25a,b,c, and d above.*

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Implementation of Funding Mechanism for Traffic Improvements Required to Mitigate Cumulative Traffic Impacts

26. The City shall use its best, good faith efforts, to prepare and implement a Traffic Improvement Program (“TIP”) and a Traffic Improvement Fee (“TIF”) for the Edwards Avenue Corridor, which may include the improvements listed below. Prior to the issuance of a building permit for the 351st unit excluding the Gateway Senior Residential and Lots 1-19 (the “Trigger Date”), the Project Applicant shall pay a fair share of the cost for the following traffic improvements in the amounts set forth in the Leona Quarry Fee Schedule to be provided pursuant to Condition No. 6. If the TIP and TIF have not been implemented as of the Trigger Date and other future projects that cumulatively trigger the need for the traffic improvements listed below have been approved, then the Project Applicant shall provide an acceptably rated bond or other security satisfactory to the City Attorney to ensure funding of the entire cost of such traffic improvements. City shall use its best, good faith efforts to reimburse the Project Applicant with funds raised from these future projects for amounts in excess of the Project’s fair share. If as of the Trigger Date a TIP and TIF have not been adopted and the Project Applicant does not agree that the other approved projects have triggered cumulatively the need for such improvements, the Project Applicant may request that the City conduct a traffic study to determine whether the traffic improvements listed below are required. The Project Applicant shall pay for the cost of the traffic study, as established by the City with regard to scope of work and selection of a qualified traffic engineer. The City agrees to perform the traffic study and agrees to reasonably consider amending the list of improvements to implement the conclusions of the traffic study. If the study determines that certain of the improvements are not required, then upon this determination, the Project Applicant shall pay the City only the Project’s fair share of the cost for each such improvement, based upon the lower of the amounts set forth in Attachment A to these conditions of approval or a revised cost for such improvements approved by the City in its sole discretion. In the event the Project Applicant installs or otherwise pays for the entirety of any of the traffic improvements listed below, the Project Applicant shall receive a credit or reimbursement for such work or costs that exceed its fair share. This Condition of Approval applies to the following traffic improvements and studies:
- a. Modification at the west leg of the signalized intersection of *73rd Avenue / MacArthur Boulevard [6]* to add a second left-turn lane on eastbound 73rd Avenue. **(MM #K.2d)**

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- b. Installation of traffic signals and restriping of the eastbound Keller Avenue approach to provide two through-lanes at the unsignalized intersection of Mountain Boulevard / Keller Avenue [7]. (MM #K.2e)
- c. Installation of traffic signals at the unsignalized intersection of Keller Avenue / I-580 eastbound off-ramp [9]. (MM #K.2g)
- d. Installation of traffic signals and the addition of a second eastbound left-turn lane at the unsignalized intersection of I-580 westbound off-ramp / Mountain Boulevard – Kuhnle Avenue [16]. (MM #K.2h)
- e. installation of traffic signals at the unsignalized intersection of Seminary Avenue / I-580 eastbound off-ramp – Overdale Avenue [18]. (MM #K.2i)
- f. The improvements described in Conditions of Approval Nos. 25.b and 25.c.
- g. If a TIF and TIP are approved, the City as part of the TIF and TIP shall include and fund a study of other long-term operational traffic improvements along the Edwards Avenue/82nd and Seminary Avenue routes, particularly the Foothill-82nd Avenue segment and the MacArthur-Seminary segment.
- h. If a TIF and TIP are approved, the City as part of the TIF and TIP shall include and fund a study of any further intersection improvements in the Edwards Avenue corridor area, beyond those identified in the EIR, that should be included as part of the TIP.

**Acknowledged. A qualified independent engineer (Fehr and Peers) has been retained by the City. Completion and approval of the TIF and TIP is scheduled for 2006.*

Vesting Tentative Map Requirements

- 27. The maximum number of residential units for the approved project is 477. Any minor revision of the internal circulation plan or lot layout shall be subject to the review and approval of the Development Director at least 45 days prior to filing each final map.

**Per the Settlement Agreement of 12/03 the maximum number of residential units will be 423. No minor revisions have been proposed or are currently anticipated.*

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28. As set forth in Condition of Approval No. 3.d., multiple final maps may be filed subject to the phasing plan set forth in Condition of Approval No. 13. Modifications to the phasing program are subject to the review and approval of the Development Director, and at his/her sole discretion, any modifications may be subject to review of the Planning Commission.

**Acknowledged*

29. For lots 1-19, the development standards and requirements used shall be the R-30, - One Family Residential Zone Regulations (Chapter 17.16 of the Oakland Municipal Code) and Special design requirements for such lots contained in OMC Chapter 17.102.380. Each residential unit proposed for these lots shall be individually subject to the design review requirements set forth in the Design Review Chapter 17.160. For Lot 19, a written evaluation and confirmation of the areas of potential habitat for the Alameda Whipsnake shall be submitted prior to or concurrent with the design review application, along with recommended measures, as required to avoid disturbance of this area during construction and post construction activities.

**In compliance with the above the design review process has commenced and the lot 19 evaluation by WRA was submitted and September 26, 2005.*

30. Prior to the approval of each Final Map, a site plan shall be submitted for the review and approval of the Development Director or his/her designee demonstrating substantial compliance with the approved VTM and the approved "PUD Design and Specification Document for the Leona Quarry Project."

**Tracts 7351, 7492 and 7493 final maps are in substantial compliance with the approved VTM and approved PUD Design and Specification Document for the Leona Quarry Project.*

31. Prior the submittal of the first Final Map for the project, the covenants, conditions and restrictions ("CC&Rs") for the attached units within the VTM Phase I and II Areas shall be submitted for review by the City. The CC&R's shall provide for the establishment of a homeowners association for the maintenance and operation of all sidewalks, common open space areas, the community center, all common area improvements and common structure improvements that are not within the purview

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of the GHAD. Similarly, prior to the issuance of the building permit for Parcel Z (Gateway Senior Housing), the Project Applicant shall provide assurances for maintenance and operation of the improvements within Parcel Z.

**Draft CC&R's have been submitted for review and approval 10/13/04.*

32. Concurrent with the submittal of the last Final Map for the approved project, an open space and conservation easement shall be submitted to the City for Parcels A-A, B-B, C-C, and D-D, providing that no grading or other development activity or removal of trees or other vegetation may occur in these areas except as necessary for maintenance and operation of the GHAD.

**A conservation easement over Parcels A-A, B-B, C-C, and D-D in compliance with the above as well as in compliance with the 12/03 Settlement Agreement has been drafted and is expected to be executed later this year.*

33. At least 45 days prior to recording each Final Map, plans shall be submitted for review by the City Building Services Department to obtain addresses and for street name approval. Alternate street names should be submitted in the event of duplication and to avoid similarity with existing street names. Final Maps shall not be certified as ready for approval without the approved street names.

**Street names and addresses for Tracts 7351, 7492 and 7493 have been submitted and approved by the City Building Services Department.*

34. The Project Applicant shall revise the VTM prior to approval becoming effective, as follows:
- a. Note 9 : Proposed Zoning – R-50 Planned Unit Development
 - b. Note 14: Roadways – All roadways shown on this plan are proposed to be public and offered for dedication to the City of Oakland
 - c. Note 17: Dimensions - Dimensions shown are minimum and may change during final design.

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- d. Note 20: Erosion Control: Erosion control measures shall be prepared as set forth in the Conditions of Approval and Mitigation Monitoring and Reporting Program for the PUD approved by the Oakland City Council on February 3, 2004
- e. Note 21: Maps: Multiple Final Maps may be filed on the lands shown on this map subject to all the Conditions of Approval and Mitigation Monitoring Program as set forth in the PUD approved by the Oakland City Council on February 3, 2004
- f. Note 22: Phasing: This project is proposed to be constructed in Phases as set forth in the Conditions of Approval and Mitigation Monitoring and Reporting Program as approved by the Oakland City Council on February 3, 2004. Phasing boundaries may be approved only upon written permission from the Development Director.
- g. Note 23: Street Names: Final street names shall be approved as set forth in the Conditions of Approval for the PUD as approved by the Oakland City Council on February 3, 2004.
- h. Note 25: Dedications, Easements and Right of Entry: Additional and specified dedication of property rights and rights of entry as necessary to accommodate all drainage facilities, sewer facilities, public utility easements and other easements as may be necessary to properly serve the lots created shall be dedicated as part of the filing of future final maps.
- i. Note 26: All utilities shall be installed underground according to the standards and requirements of the City of Oakland and the applicable utility.

**A revised VTM dated 3/17/03 was submitted in conformance with COA 34a – 34i above.*

- 35. Prior to the issuance of a grading permit, as set forth in Condition of Approval 13, the applicant shall submit a detailed master improvement plan for the site prepared by a licensed Civil Engineer, with all conditions and requirements as set forth in these Conditions of Approval for the private property and the public rights of way, including but not limited to curbs, gutters, pedestrian ways, sewer laterals, storm drains, street trees, paving details, locations of transformers and other above ground utility structures, the design, specifications and locations of the water pumping facilities required by the East Bay Municipal Utility District

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(EBMUD), street lighting, on-street parking and accessibility improvements required to comply with all applicable City standards, including the approved landscape plans for the “I” and ‘J” Street landscaped pockets, the design of the pedestrian stairway paths and the street tree locations and planting specifications. This information shall include a capacity analysis in designated areas of the sub-basin from the point of discharge to MacArthur Blvd to confirm the improvements required to the downstream sewer system to meet Public Works Department requirements.

This plan shall be reviewed and approved by the City Engineer and used as the confirmation of compliance with subsequent phased final improvement plans submitted during the phased development requirements in Condition of Approval 13.

**A detailed master improvement plan, landscape plan, and sanitary sewer capacity analysis have been submitted, reviewed, and approved in concurrence with the above.*

36. The final maps that are filed for the approved project shall include all easements necessary to provide access for public utility connections, the Ridgemont sub-basin connection, if required, public access easements for the park and pathways through the site and the emergency access routes (Gateway EVA, and the Altura and the Northwestern supplemental routes).

**The submitted final maps for the tracts 7351, 7492, and 7493 conform to the above.*

37. For the duration of the project, the City Development Director shall have the authority to determine whether the Project Applicant and the Project substantially comply with terms and conditions of this approval, including, without limitation, these Conditions of Approval, or any conditions or requirements of the GHAD. In determining compliance, the Director shall interpret and apply conditions and terms requiring conformance with engineering standards, conformance with the purpose and intent of the Municipal Code sections upon which conditions are based, conformance with the intent of mitigation measures as discussed in the EIR and the SEIR, or as reasonably necessary to promote architectural integrity and the purpose of integrated development as set forth in the PUD. Upon a determination of non-compliance, the Director shall have the authority to suspend

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further Project approvals, including without limitation final subdivision maps, grading permits, building permits or certificates of occupancy for the duration of such noncompliance. The City shall take reasonable steps to promptly notify, in writing, the Project Applicant of any request (including a request by City staff or by the public) that the City Development Director make a determination of noncompliance, and shall provide the Project Applicant with written notice of any non-compliance determination by the City Development Director. The City shall provide the Project Applicant a copy of all documents used or relied upon in making such determination. On or before October 15 of each year, the Project Applicant shall submit to the City Development Director a report demonstrating the Project Applicant's and the Project's compliance with the terms and conditions of the Approval, including, without limitation, these Conditions of Approval. This report may be used by the City Development Director to evaluate the Project Applicant's and the Project's compliance with the terms and conditions of this Approval. Project Applicant's obligation to submit this annual report shall terminate upon the City's written determination that the Project is complete.

**Acknowledged. This annual compliance report complies with the above.*

Project Sustainability Requirements

38. The applicant shall comply with all sustainability measures as proposed in the document submitted October 11, 2002, entitled "Leona Quarry Development Project; Sustainability Measures; Conditions for Approval", produced for The DeSilva Group by Adam Berman, Tilden Consulting, Inc., Geof Syphers, Xenergy Inc. and shall also incorporate the following additional sustainability measures:
- a. Install Hardwired Compact Fluorescent Fixtures in Bathrooms, Kitchens, and for Outdoor Lighting.
 - b. Specify Low-VOC (volatile organic compounds) paint for all interior applications.
 - c. Use Formaldehyde Free Fiberglass insulation in the walls and ceilings.
 - d. For all interior flooring materials, offer the buyer the choice of linoleum and tile in addition to other flooring materials, and prepare a brochure that highlights the environmental and maintenance issues of all the materials offered. The City of Oakland shall review and approve the brochure prior to publication.

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- e. For all framing timber, obtain a valid price quote and availability schedule for lumber certified by the Forest Stewardship Council (FSC), which certifies that wood has been grown using sustainable forestry practices. Obtain a price quote and availability schedule for the same products and at the same time as a price quote for other framing timber. Use FSC certified framing timber for at least 50 percent of the framing timber if the price quote for the FSC certified timber is no greater than the price quote for the other comparable framing timber and the availability is the same for both.

- f. The Project Applicant shall install solar panels to be the primary source of energy for at least 15 percent of the living units within the total project. The solar panel arrays shall be installed on the hill area immediately behind the terrace units on “K” street. Stability and safety of the proposed installation shall be reviewed and confirmed as part of compliance with the geotechnical requirements as set forth in Condition of Approval 22. Other locations may be acceptable, but shall be reviewed and approved by the Development Director prior to installation. The landscape plan requirements as set forth in Condition of Approval shall incorporate trees and other planting such that the panels are screened from distant views to the maximum extent feasible while still allowing full sun access to the panels.

**Acknowledged. The current and future work is and or will comply with the above COA 39a – 39f.*

Fire and Life Safety Requirements

- 39. As part of the public improvement plans for the site as required by Condition of Approval 35, the Project Applicant shall provide detailed specifications and design information including but not limited to:
 - a. The road surface and pathway surface design for the Northwestern and Altura supplemental access routes as well as the routes from “I” Street to “J” Street and from “H” Street to “B” Street, demonstrating that these routes meet Fire Department standards with reference to NFPA standards, 1998 CFC Article 9.

 - b. The design specifications for the gates at the Northwestern and Altura supplemental access routes, including provisions for the Knox Box lock system.

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- c. Schematic plans for providing adequate emergency access routes into and around the residential buildings on the site and other fire protection and fire fighting measures.
- d. All final designs for buildings shall include safety locks on doors and windows, lighted house numbers, project street and directory signs and outdoor lighting.

**Acknowledged. Some items not yet applicable.*

Payment of Fees for Independent Technical Reviews and Project Coordination and Management

- 40. Within 90 days following the Effective Date, the Project Applicant shall enter into an agreement to establish the terms and conditions of this Condition of Approval. The City and the Project Applicant acknowledge that the large scale, complexity and phased schedule for the approved project require a level of expertise and monitoring that are beyond the standard practices of the City for a development project. Further, the MMRP requires a number of independent experts monitoring grading and construction activities including but not limited to biologists, geotechnical engineers, hydrologists, air quality and noise monitors, etc. The Project Applicant shall fund the full costs of all independent technical and other consultants the City deems is required to comply with the Conditions of Approval and the mitigation monitoring requirements as set forth in the MMRP. All work performed pursuant to this Condition of Approval shall be under the direct supervision of the City. Accordingly, the applicant shall establish an “evergreen” deposit fund with the City in order to cover the full costs of independent technical and other types of review, monitoring and inspection, including, without limitation, third party plan check fees. The payment of standard plan check fees, building permit fees, special inspection deposits and other required fees shall, to an extent determined by the City, be credited as part of this evergreen fund. The City shall provide the Project Applicant with quarterly detailed statements, including staff names, time entries and description of work performed, as to the amount of funds used and the amount of deposit required to sustain the fund. City retains the right to halt work on the project if Project Applicant fails to make requested payments to the fund within the time period specified. The Project Applicant may conduct an annual audit of the funds used. Any failure of any party to timely execute such Agreement shall not be construed to limit any right or obligation otherwise specified in these Conditions of Approval, including,

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without limitation, Conditions of Approval Nos. 9 and 10, except that it shall not limit Development Director authority as set forth in Condition of Approval 37.

**In concurrence with the above June 23rd, 2005 DSG and the City executed the REIMBURSEMENT AGREEMENT FOR SPECIALIZED CONSULTANT AND EMPLOYEE SERVICES AND RELATED EXPENSES which was effective February 17th 2004.*

Construction Management and Phasing

41. As a requirement of Pre-construction Phase A as set forth in Condition of Approval 13, the Project Applicant shall submit a Construction Phasing and Management Plan, incorporating all applicable mitigation measures in the MMRP including Air Quality (**MM A.1a**); Biological Resources (**MM B.1a, B.5a, B.6a, B.8a**); Cultural Resources (**MM C.1a, C.2a, 2b, 2C and 3.a**); Erosion Control and Storm Water Management (**MM F.2a, 2b**); Solid Waste Reduction and Recycling (**MM L.1a**); Noise (**MM H.1a and b**); Traffic, Circulation and Parking (**MM K.8**) The plan shall also include the following additional measures and standards:
- a. A site security and safety plan to assure that grading and construction activities are adequately secured during off-work hours.
 - b. A fire safety management plan for all phases of work, including provisions for access, water, and other protection measures during grading and construction activities.
 - c. A plan to provide temporary access to the model units during active construction activities, including path of travel, securing the active construction areas and parking.

** In accordance with condition 41 a Construction Phasing and Management Plan has been submitted and approved by the City for all work currently underway.*

Affordability Requirement for Gateway Senior Housing Project

42. Prior to the issuance of an occupancy permit for the Gateway Senior Housing Project, written documentation shall be submitted to the Development Director, for review and approval confirming that a deed restriction or other legal commitments have been secured to ensure the continued availability and use of

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the residential units for low income persons, as defined in Section 50079.5 of the California Health and Safety Code.

**Per the Settlement Agreement of 12/04 the Gateway Senior Housing Project has been removed.*