

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: John A. Russo
City Manager

Date: October 4, 2011

Re: Authorize the City Manager to Execute a Memorandum of Agreement Between the City of Alameda and Harbor Bay Isle Associates Regarding Application Processing and Preparation of a Property Exchange Agreement Related to a Proposal for a Land Exchange and Funding for the Chuck Corica Golf Complex Course Improvements and New Sports Fields on North Loop Road

BACKGROUND

On November 6, 2008, the City Council authorized the City Manager to enter into a one-year agreement with KemperSports Management to provide interim management of the Chuck Corica Golf Complex (December 2008-December 2009). In July 2009, staff prepared a Request for Proposals seeking a long-term operator to provide management, operational, and maintenance functions on a long-term lease basis. The City was also looking for a firm willing to invest much-needed funds in capital improvements, an investment the City had been unable to make for many years. Following an extensive review, the City Council approved the selection of KemperSports Management on March 16, 2010, and directed staff to begin negotiations for a long-term agreement. Between March 2010 and December 2010, City staff worked with KemperSports Management to develop a number of scenarios for the future long-term operation of the Chuck Corica Golf Complex.

On April 12, 2011, the City Council held a special meeting regarding golf in order to discuss a revised Kemper proposal in which Kemper would have retained the existing 36-hole course configuration and made improvements to the golf course and the driving range. The funding for the improvements would have been taken from revenues from the course and not from KemperSports Management. The renovations included work on the drainage and irrigation, renovation of the driving range, replacing the greens on the Jack Clark Course, renovating the tees and bunkers on the Jack Clark Course, and repairing the cart paths.

At the April 12, 2011, meeting, Mr. Tim Hoppen, President of Doric Realty (Harbor Bay Isle Associates, HBIA), asked the City Council to delay making a decision on the Kemper proposal and consider an alternative proposal in which the City would "swap" the Mif Albright 9-hole course for land that HBIA owns on North Loop Road. The City

City Council
Agenda Item #6-C
10-04-11

Council agreed to delay its decision on the Kemper proposal in order to allow HBIA an opportunity to further develop its proposal.

On July 12, 2011, the City Council held a meeting to hear HBIA's "swap" proposal in more detail. The HBIA proposal included the following elements:

- The City and HBIA would "swap" 12.2 acres at North Loop Road for the 12.2 acres currently occupied by the Mif Course.
- The City and Kemper would rebuild the Mif Course adjacent to the reconfigured and improved Jack Clark 18-hole Golf Course.
- The City would build new playing fields on the North Loop Road site.
- HBIA would contribute \$5 million to the construction of the Golf Course improvements and the playing fields.
- HBIA would work with the North Loop Business Association, and the Harbor Bay Business Park to identify additional private funds for the construction and maintenance of the playing fields.
- HBIA would seek to entitle the Mif Albright property for up to 116 homes.

After hearing public comment on the proposal, the City Council directed staff to study the proposal and return with the results of that analysis and a firm proposal for moving forward. Since the July 12, 2011 City Council meeting, staff has been meeting with HBIA and evaluating the feasibility of the proposal. This work has resulted in a recommended draft Memorandum of Agreement (MOA) with HBIA that would document a process for further evaluation and decision-making (Exhibit 1). HBIA has covered all of the staff costs, including consultant and legal costs, associated with the work completed to date.

DISCUSSION

Given that the City Council cannot make any final decisions on the wide range of actions that would be needed to accomplish the proposal until such time that a complete environmental review has been completed, City staff and HBIA have been focusing recent discussions on a draft MOA. This agreement would establish a process by which HBIA and the City would work together to further develop, further evaluate, and ultimately, make a decision as to whether the proposal is in the best interests of the City of Alameda.

Approval of the MOA by the City Council and HBIA does not represent an approval of the proposal, nor does approval of the MOA commit the City Council to approve the proposal at a future date. Approval of the MOA by the City Council and HBIA establishes a process by which both parties (the City and HBIA) will work together to further evaluate the proposal and establishes a source of funds for the City of Alameda to complete a full evaluation of the HBIA Proposal.

The draft MOA includes the following terms:

- Term: HBIA and the City will work together to further evaluate the proposal until a final decision is made by the City Council on the proposal or March 31, 2012, whichever comes first.
- Costs: HBIA will cover all costs, including City staff time and City consultant time, including legal services, to evaluate the proposal and prepare all necessary documents and reports, including the Environmental Impact Report (EIR), exchange agreements, and all legal and financial documents for City Council consideration.
- Products: The objective of the work to be completed under the MOA is a package of documents for community and City Council consideration. The package would include:
 1. An EIR evaluating all environmental aspects of the proposal. (To inform the planning effort and the MOA discussions, work on the EIR has already begun with funds provided by HBIA.)
 2. A draft resolution, a draft ordinance, and a Planning Board recommendation on the proposed re-designation and rezoning of the Mif property from Open Space to Residential.
 3. A draft resolution and a Planning Board recommendation on a tentative map for up to 130 single family homes on the Mif property. (See Exhibit 2 for a conceptual layout of 130 lots on the Mif property.)
 4. A draft amendment to the 1989 Harbor Bay Development Agreement (DA) to include the new 130-unit "village".
 5. A recommendation from the Golf Commission on the proposed re-configuration of the Jack Clark Course to accommodate the relocated Mif 9-hole Course. (See Exhibit 3 for a conceptual draft layout of the reconfigured course.)
 6. A draft resolution, a draft ordinance, and a Planning Board recommendation on the proposed re-designation and rezoning of North Loop Road from Commercial Manufacturing to Open Space in the General Plan and Zoning Ordinance.
 7. A recommendation from the Recreation and Park Commission on the proposed recreational facilities on the North Loop Road. (See Exhibit 4 for a conceptual layout for new playing fields at North Loop Road.)

8. A draft Property Exchange Agreement (PEA) for the “swap” of the two properties. HBIA would give the City 12.2 acres of land that it owns on North Loop Road, and the City would give HBIA 12.2 acres owned by the City and currently occupied by the Mif Albright 9-hole course.

- City Commitments: Per the draft MOA, the City is committed to work expeditiously to complete the package of documents described above and bring the products to the Boards, Commissions, and City Council for consideration. Per the MOA, the City Council retains the ability and right to deny or amend the packages without incurring any financial penalties or repaying any of the costs incurred by HBIA in producing the package of documents.
- Financial Contributions: If the City Council approves the package of documents described above, including the PEA, DA Amendment, and a 130-unit Tentative Map, then HBIA would provide the City with \$7.2 million in addition to the 12.2 acres of land on North Loop Road valued at approximately \$8 million in the City’s appraisal, in exchange for the rezoned Mif property and the development rights afforded to HBIA under the amended development agreement. The Mif property was appraised at approximately \$9 million assuming entitlements for 116 homes would be pursued on 14 acres. The \$7.2 million would be made available to the City within a specified time after approval of the PEA for the City to use for, among other things, reconfiguration and improvement of the Golf Complex, relocation of the 9-hole course, and building the sports complex on North Loop Road. If the City Council approves the package, and if for some reason HBIA were unable to provide the funds, the City would retain a \$200,000 deposit toward the payment provided by HBIA upon approval of the MOA. In the event that the City Council approves the package, but in the process, reduces the number of units or requires off-site improvements as conditions on the Map (e.g. traffic, sewer, and storm drain improvements) that exceed \$2.5 million in costs, HBIA has the right to reject the proposal without losing its \$200,000 deposit.
- Additional Financial Partners: HBIA will work with the North Loop Road Business Association, the Harbor Bay Business Park Association, and companies located near the North Loop Road site to contribute additional funding for construction and maintenance of the sports facilities so that no public dollars are required to implement and maintain the sports fields. User fees are also anticipated to be an important source of funds for the maintenance of the fields.

Major Issues to be Evaluated During the MOA Period:

If the City Council chooses to enter into the recommended MOA, the community should be aware that there are still a number of major issues to be resolved. The MOA is designed to provide a process whereby the major issues can be studied, solutions can be recommended, and the City Council can be better informed before making a final decision on the proposal. Some of the major issues include:

- Traffic, Sewer, Storm Drain and Off-site Costs: From the City's perspective, it will be essential to ensure that the proposal does not result in unacceptable off-site impacts (e.g. traffic, sewer, flooding) on the Bay Farm island community, and that the City is not faced with unexpected costs to improve these types of facilities in the future as a result of the project.

Traffic on Island Drive in the morning commute hour is currently a major concern for many Bay Farm Island residents. Through the EIR process and the Planning Board hearings, the City staff and consultants will attempt to develop a series of transportation improvements that will minimize the impact of the additional traffic generated by the proposal on the Bay Farm Island community. City staff and a team of consultants are also currently studying how best to provide storm water and sewer service for the new homes on the Mif property. The community's reaction and comfort with the traffic solutions and the other off-site issues will be important to the Planning Board's recommendations and the City Council's ultimate decision on the project

- North Loop Road Proposed Sport Fields Plan, Construction and Maintenance Costs: The MOA provides an opportunity to further study and evaluate the costs of building and maintaining the new playing fields proposed at North Loop Road. Ensuring that the City has the necessary resources identified to build and maintain the sports fields will be essential information for the City Council's final deliberations on the proposal. The Recreation and Park Commission's recommendations will also be critical input to the final deliberations, as will the recommendations of the North Loop Road Business Association.
- Golf Course Complex Improvement Plan and Costs: The MOA provides an opportunity to further study and evaluate the proposed reconfiguration of the Jack Clark Course and the costs to move the 9-hole course and improve the Chuck Corica Golf Complex. In order to ensure that the new Mif Course can fit on the existing Jack Clark Course property, HBIA hired Gary Linn of Knott & Linn, a golf course designer, to develop the plan for the course. That plan (Exhibit 3) preserves 18 championship holes on the Jack Clark Course while allowing for a new Mif Albright Par 3 course that utilizes land on the Jack Clark Course as well as some of the undeveloped land near the Driving Range. Over the course of the next few months, the staff and consultant team will continue to work with Kemper, Recreation and Parks staff and others to ensure that the City has the necessary resources identified to make these improvements. The Golf Commission's advice on the proposed reconfigurations will also be important input to the City Council's ultimate decision on the project.

FINANCIAL IMPACT

Entering into the MOA would not have a financial impact on the General Fund. Per the MOA, HBIA would cover all of the City costs incurred during the MOA period.

RECOMMENDATION

Authorize the City Manager to execute a Memorandum of Agreement between the City of Alameda and Harbor Bay Isle Associates regarding application processing and preparation of a Property Exchange Agreement related to a proposal for a land exchange and funding for the Chuck Corica Golf Complex Course improvements and new sports fields on North Loop Road.

Respectfully submitted,

A handwritten signature in black ink that reads "Andrew Thomas". The signature is written in a cursive, flowing style.

Andrew Thomas
Planning Services Manager

Exhibits:

1. Draft Memorandum of Agreement between HBIA and the City of Alameda
2. Preliminary layout for 130 homes on Mif Site
3. Preliminary layout for reconfiguration of Jack Clark Golf Course
4. Preliminary layout for sports fields on North Loop Road

MEMORANDUM OF AGREEMENT
BETWEEN CITY OF ALAMEDA AND HARBOR BAY ISLE ASSOCIATES
REGARDING APPLICATION PROCESSING AND
PREPARATION OF PROPERTY EXCHANGE AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("MOA"), dated this ____ day of October 2011, is entered into by and between the City of Alameda ("City") and Harbor Bay Isle Associates ("HBIA"). The City and HBIA may be collectively referred to as the "Parties."

RECITALS

A. The purpose of this MOA is to set forth terms, conditions, and parameters by which the City and HBIA will negotiate the definitive terms of a property exchange or similar agreement ("PEA") that will provide the City with land and funding for new and improved golf and recreational facilities and will provide HBIA with an improved location for development of approximately 130 proposed residential units within the City. This MOA also establishes the framework for the City's processing of applications for city approvals required in connection with the PEA and reimbursement by HBIA of all city expenditures and costs associated with the processing of such applications, including the environmental review required for such city approvals.

B. The City owns the Chuck Corica Golf Complex ("Golf Complex"), which consists of the 18-hole North Course, the 18-hole South Course, the 9-hole Mif Albright Par 3 Course, a driving range, and related facilities. The Golf Complex will benefit from capital improvements and a viable long-term financing plan made possible by this transaction. The City also is in need of additional sports fields that can be used by Alameda residents.

C. HBIA owns 12.22 acres of land on North Loop Road ("NLR Property") zoned for commercial use in the Harbor Bay Business Park. HBIA has filed an application to develop residential units on the NLR Property as part of a project called Village Six, but has suspended processing this application while HBIA and the City discuss potential alternative locations for the residential units proposed to be built by HBIA on the NLR Property. One of those alternative sites is a 12.22 acre site which is part of the City's current Mif Albright Par 3 course ("Mif Property").

D. Based on input from city staff and representatives of all interested parties, the City and HBIA wish to pursue a PEA and necessary city approvals that would facilitate an exchange of the NLR Property and the Mif Property between them so as to allow the development of sports and recreational facilities on the NLR Property, redevelopment of the Mif Par 3 course and other improvements on the Golf Complex, and development of approximately 130 residences on the Mif Property. A conceptual plan for development of the NLR Property with public sports fields is attached as Exhibit A. A conceptual plan for a reconfigured Golf Complex is attached as Exhibit B. A conceptual plan for development of approximately 130 residential units on the Mif Property ("Project") is attached as Exhibit C.

E. The Parties understand and agree that City Council approval is required prior to execution of the PEA and related approvals contemplated by this MOA, that such City Council approval will be determined on its merits, in accordance with City processes, and that the City has not predetermined the outcome of any application or approval request. This MOA does not

commit the City to a definite course of action with regard to the PEA or any of the approvals contemplated by this MOA. The City shall fully consider, and shall have all power and authority pursuant to this MOA to select, approve, and implement, any alternative to the approvals contemplated by this MOA, including a "No Project" alternative. The City also shall fully consider, and shall have all power and authority pursuant to this MOA to select, approve, and implement, the full range of mitigation measures that may be appropriate to reduce or avoid potential environmental effects of the PEA and the related approvals pursuant to the California Environmental Quality Act ("CEQA").

F. In the judgment of the City Council, acting in the best interests of the people of the City, and in exercise of its police power regarding the beneficial management of City property, this MOA represents an appropriate approach for advancing all interests associated with improving public golf and other sports facilities and locating residential units in the City with no net loss of City parkland and at no cost to the City.

IN CONSIDERATION OF THE FOREGOING FACTS, AND THE MUTUAL COVENANTS AND PROMISES CONTAINED IN THIS MOA, THE PARTIES AGREE AS FOLLOWS:

1. Effective Date & Term. This MOA shall become effective on the date this MOA is fully executed by the Parties ("Effective Date"). This MOA shall terminate upon the earlier of (i) full execution by the Parties of the PEA, or (ii) March 31, 2012 ("MOA Termination Date"), unless such termination date is modified pursuant to Section 6 or Section 15 below.

2. Processing of Applications for City Approvals.

2.1 Initial Applications. By October 31, 2011, HBIA shall submit substantially complete applications for the following in connection with the Project (the "Initial Applications"):

(a) General Plan Amendments to change the land use designation of the NLR Property from "Business Park" to "Parks & Public Open Space" and to change the land use designation of the Mif Property from "Parks & Public Open Space" to "Medium-Density Residential"; and

(b) Rezoning of NLR Property from "C-M-PD" (Commercial Manufacturing with a Planned Development overlay) to "O" (Open Space) and of the Mif Property from "O" (Open Space) to "R-2/PD" (R-2 Residential with a Planned Development overlay).

2.2 Subsequent Applications. By November 30, 2011, HBIA shall submit substantially complete applications for the following land use approvals in connection with the Project (the "Subsequent Applications"); collectively, the Initial Applications and the Subsequent Applications are referred to as the "Applications"):

(a) A Tentative Subdivision Map for the subdivision of the Mif Property into approximately 130 residential units ("Tentative Map");

(b) A Development Plan establishing the development standards, restrictions, guidelines, minimum lot sizes, public rights of way, and access points for residential development of the Mif property ("Development Plan"). The Development Plan, if adopted, shall

run with the land and shall govern the review of all subsequent approvals of the Mif Property, including the Tentative Map; and

(c) An Amendment to the existing 1989 Harbor Bay Development Agreement ("Development Agreement") between the City and HBIA to remove the NLR Property from the area covered by the DA and to include the Mif Property ("DA Amendment"). Under the DA Amendment, the NLR Property will no longer benefit from any of the provisions of the Development Agreement or be subject to any of its obligations. Under the DA Amendment, the Mif Property will be treated for all purposes as if it had been and continues to be subject to the Development Agreement from the time the Development Agreement went into effect. The DA Amendment also will protect the approvals for development of approximately 130 single-family residential units on the Mif Property.

2.3 Processing Generally. The City shall endeavor to consider and act upon the Applications by March 31, 2012. The Parties acknowledge that the City's ability to consider and act upon the Applications is contingent upon compliance with CEQA, prerequisite information being provided to the City (including information from HBIA), and the requirement that the City Council exercise its independent discretion in deciding whether to grant the approvals sought in such Applications ("Approvals").

3. Property Exchange Agreement.

3.1. Preparation. The City and HBIA shall negotiate and jointly prepare for City Council consideration a PEA formalizing the terms of the property exchange proposed by this MOA. The Parties anticipate that the City Council will consider and act upon the PEA at the same time as the Applications, pursuant to Section 2.3 above.

3.2 PEA Contents. It is anticipated by the City and HBIA that the PEA shall:

3.2.1 Provide that, in the event the City grants the Approvals and such Approvals (a) grant the right to develop 130 single-family residential units or any lesser number of residential units HBIA may have requested in the Applications, (b) require that HBIA contribute no more than \$2,500,000 toward projected off-site costs, based upon professionally prepared estimates of such improvement costs, and (c) impose no more fees or exactions than those that are permitted under the Development Agreement or are required by the environmental review process under CEQA, then HBIA shall be required to proceed with the property exchange pursuant to the terms of the PEA.

3.2.2 Provide further that no later than three (3) business days before the PEA Closing Date (defined in Section 3.2.3 below), the Parties shall provide documents and place funding into an escrow account to achieve the following at closing:

(a) The City's conveyance and delivery of possession of the Mif Property to HBIA or its designee;

(b) HBIA's conveyance and delivery of possession of the NLR Property to the City; and

(c) HBIA's advance payment of fees and charges for the development and improvement of the Mif Property in the amount of \$7,200,000, inclusive of any prior deposits made pursuant to this MOA into an escrow for the benefit of the City to allow, among

other things, improvements to the Mif Property and the NLR Property for recreational purposes in exchange for the Mif Property and the City's approval of the Applications, including the DA Amendment.

3.2.3 Provide for the closing of the property exchange and related transactions to occur within forty-five (45) days after environmental review under CEQA, all Initial Approvals, and the PEA are final and beyond any further appeal ("PEA Closing Date").

3.2.4 Provide that on each of up to three occasions, HBIA, in its sole discretion, may extend the PEA Closing Date by ninety (90) days, provided HBIA is in substantial compliance with all material terms of the PEA and HBIA pays a deposit of \$200,000 into the escrow established under Section 4 for each extension, which shall be applied against the remaining payment due at closing.

3.2.5 Provide that failure by HBIA to close by the PEA Closing Date, including any extensions as provided, will result in termination of the PEA and the DA Amendment.

3.2.6 Provide that the Initial Deposit (defined in Section 4 below) and any deposits made under Section 3.2.4 shall be retained by the City as liquidated damages in the event of termination described in Section 3.2.5.

3.2.7 Provide that, in the event the Parties fully execute both the PEA and the DA Amendment and either document is subsequently set aside in the event of legal challenge, both agreements shall be terminated and the City shall refund to HBIA the Initial Deposit within thirty (30) days.

3.2.8 Provide that the exchange of the NLR Property and the Mif Property shall be "AS IS" and the representations of the transferor shall be limited to commercially standard representations in an "AS IS" transaction. The Parties agree that because the transaction is an exchange of property, no transfer tax shall be applicable to either party in connection with the exchange of the two properties, but transfer taxes shall be applicable to subsequent sales of homes constructed on the Mif Property. All closing costs shall be payable as is customary in commercial transactions in the City. Title shall be evidenced by an ALTA policy provided that the transferee has obtained a survey acceptable to the title company chosen by the Parties to handle the escrow for the transfers contemplated.

3.2.9 Incorporate the provisions of Section 2 and Sections 8 through 14 of this MOA regarding processing, CEQA review, reimbursement by HBIA of all City and Consultant costs, and the Evergreen Account, all of which shall continue to apply for as long as the City is processing the Applications.

3.2.10 Establish a transaction structure that permits treatment of the transaction by HBIA as a tax-free exchange of property.

3.2.11 Identify the Parties' rights and obligations regarding the development of the Properties, comply with applicable provisions of the Alameda City Charter for disposition of public park land, and confirm the public benefit to the City.

3.2.12 Provide for use of the Escrow previously established by this MOA and for the deposits and payments required to be made into Escrow.

3.2.13 Provide that HBIA shall have the right to sell, assign, or transfer its rights under the PEA to any third parties or entities.

3.2.14 Include those terms the Parties determine are necessary to effectuate the intentions of the Parties.

4. Initial Deposit. Within fifteen (15) business days of approval by the City Council and execution by the City Manager of this MOA ("Initial Deposit"), HBIA shall pay into an escrow established by the parties under this MOA with a mutually acceptable escrow agent, a \$200,000 deposit.

5. Additional Payment. In addition to the advance payment of development and improvement fees provided for in Section 3.2.2(c) above, HBIA shall pay an additional amount to the City of Three Hundred Thousand Dollars (\$300,000) upon the City's issuance of the first building permit for the Project, which amount shall be used to pay for and offset the costs of off-site improvements that are directly and substantially related to, and for the specific benefit of the Project. Such advance payment shall count toward HBIA's contribution toward projected off-site costs, as discussed in Section 3.2.1.

6. Modification of MOA Termination Date.

6.1 City Manager's Extensions. On up to two occasions, the City Manager, in his sole discretion, may extend the MOA Termination Date by ninety (90) days, provided HBIA gives ten (10) days' written notice of such request, as provided in Section 20 below, prior to the MOA Termination Date, and the City Manager first finds HBIA is in substantial compliance with all material terms of this MOA; and

6.2 Automatic Extensions. The MOA Termination Date shall be automatically extended as follows: Provided that HBIA files substantially complete Applications as required by Section 2 above, the MOA Termination Date shall be extended automatically if, due to City actions or inactions, the City has not completed environmental review under CEQA or processed the Applications such that staff is unable to present to the City Council for its consideration the Applications and the PEA by March 31, 2012. Such extension shall continue until the Applications and the PEA are presented to the City Council and the City Council has made a final decision with regard to the Applications and the PEA; in the event the City Council approves the Applications and the PEA, the extension shall further continue until the PEA and the DA Amendment are fully executed by the Parties.

6.3 Automatic Default. In the event HBIA fails to pay the Initial Deposit in the amount and by the date specified in Section 4 above, such failure shall be considered a default subject to the provisions of Section 15 below.

6.4 HBIA Right to Terminate. HBIA shall have the right to terminate this MOA:

(a) For any reason, upon ten (10) days' written notice to the City as provided in Section 20 below;

(b) Upon three (3) days' notice if City staff recommends, in a report to the Planning Commission or the City Council, that the Approvals (i) grant the right to develop fewer than 130 single-family residential units or fewer than such lesser number of residential units

HBIA may have requested in the Applications, (ii) require that HBIA contribute more than \$2,500,000 toward projected off-site costs, based upon professionally prepared estimates of such improvement costs, or (iii) impose more fees or exactions than those that are permitted under the Development Agreement or are required by the environmental review process under CEQA; or

(c) Immediately, and without prior notice, if one or more members of City Council, when City Council is preparing to vote on the Approvals, moves to grant the Approvals and such Approvals include any of the three (3) items identified in Section 6.4(b) above.

6.5 Further Rights and Obligations. Upon termination under Section 6.4, neither party shall have any further right or obligation pursuant to this MOA, except for HBIA's indemnification and reimbursement obligations in connection with work performed and costs incurred during the effectiveness of the MOA, which obligations shall survive termination until they are satisfied in full.

6.6 Retention of Initial Deposit. In the event HBIA exercises its right to terminate this MOA under Section 6.4(a), the City shall retain the Initial Deposit.

6.7 Refund of Initial Deposit. In the event HBIA exercises its right to terminate this MOA under Section 6.4(b) or Section 6.4(c), the City shall refund to HBIA the Initial Deposit within thirty (30) days.

7. HBIA's Work with Harbor Bay Business Park. HBIA shall make commercially reasonable efforts to work with other property owners and businesses in the Harbor Bay Business Park to encourage them to agree to make financial contributions to the cost of construction of the new sports fields and related facilities, and to encourage them to arrange for the ongoing maintenance of the sports fields and related facilities to be included in the scope of work of the Harbor Bay Business Park Zone of the City's Island City Landscape and Lighting District 84-2 and paid for from assessments levied on the properties in the Harbor Bay Business Park.

8. HBIA's Reimbursement of the City's Costs. HBIA shall reimburse costs the City incurs as provided in this Section 8. The Parties agree that the permits and planning requests to be reviewed, evaluated, considered, and processed by the City shall be those in the Applications. HBIA agrees to provide the "Technical Reports" (defined in Section 9 below) and any other information reasonably required for the City's environmental review process. The City's processing of applications for which deposits shall be made pursuant to this Agreement shall include, without limitation: (a) all work that facilitates the City's review, evaluation, consideration, and processing of: (i) the Applications, (ii) the Project, (iii) Technical Reports submitted in support of the Applications or developed by the City or its consultants, (iv) supplements or amendments to the Applications and any accompanying data, submittals, and materials, and (v) any supplementary or additional material provided by HBIA or developed by the City or its consultants; (b) preparation by the City and its consultants of Technical Reports and related material, documentation, and data relating to the Applications, including but not limited to supplemental or additional Technical Reports, as well as review, evaluation, consideration, and internal and external communication regarding such supplemental or additional Technical Reports; and (c) negotiation and preparation of a PEA and DA Amendment and/or other agreements deemed necessary by the City to protect its interest in the event any of the Applications are approved. Expenses for which HBIA shall deposit funds with the City pursuant to this and any other section of this Agreement may include (x) staff time and

expenses at rates consistent with those charged to other applicants on major planning projects, (y) consultant fees and costs (including, without limitation, costs and fees of specialized legal counsel retained to assist city staff and the City's consultants); and (z) any other items that are agreed to in writing by the City and HBIA.

9. Environmental Review. The City will act as lead agency under CEQA. HBIA understands that the environmental consultant, or its subconsultants or designees, will prepare, at HBIA's cost, and submit to the City any and all studies and evaluations that may be requested as a part of the City's CEQA review and planning processes, including, without limitation, studies and evaluations covering issues such as air quality; energy and greenhouse gas emissions; biological resources; cultural resources; hazardous materials and related issues; hydrology and water quality; noise; transportation; water supply; wastewater and stormwater; fiscal reports; planning studies; and others that may be required in the City's discretion (collectively, the "Technical Reports"). Before the City requests any Technical Report, it shall notify HBIA of the request and explain the reasons for the request. The City shall allow HBIA a reasonable amount of time to review the request and, if HBIA disagrees with the request or its scope, to discuss the request with the City. If the Parties are unable to agree upon the request, the City may proceed with any Technical Report it determines is necessary to complete its environmental review under CEQA. The City will review and consider the Technical Reports in the preparation of its environmental evaluation under CEQA and its consideration of the Applications. HBIA acknowledges and agrees that the City must independently review and exercise its independent judgment with respect to the content and conclusions of the Technical Reports and may in its discretion retain peer review consultants or rely upon its own staff, at HBIA's cost, to review and comment on the Technical Reports, or to provide such supplemental or additional Technical Reports, evaluations, analysis, and internal or external communications as the City may deem necessary or desirable, during the environmental review and planning process.

10. Consultants.

10.1. Prior to selecting any consultant or subconsultant to be retained by the City under this Agreement (each, a "Consultant"), which shall include but not be limited to the environmental consultant and any outside counsel retained by the City, the City shall provide HBIA with information relative to such Consultant, and the proposed scope and budget for such Consultant; provided, however, that the ultimate selection and retention of any Consultant shall be made by the City in its sole discretion.

10.2 The City shall deliver to HBIA copies of all proposed consultant contracts and subcontracts (collectively, "Consultant Contracts"), including budgets and scopes of work, and any proposed amendments of previously approved Consultant Contracts. All Consultants retained by the City pursuant to this MOA will report to the City. HBIA agrees that the City will charge actual staff time and expenses attributable to the administration of Consultant Contracts entered into by the City under this Agreement.

10.3 The City shall on a monthly basis deliver to HBIA copies of invoices from all Consultants. HBIA may review those invoices and inform the City in writing of any dispute that it may have within fifteen (15) days of receipt of such invoice. HBIA may ask the City to withhold payment from the Consultant and, upon such request by HBIA, the City shall temporarily withhold payment of such invoice. The City shall not be required to withhold payment of any invoice for more than ten (10) days following a request by HBIA to withhold payment. During such ten (10) day period, the City shall: (i) upon request by HBIA, meet in

person with a representative of HBIA up to two times to discuss the disputed invoice, and (ii) in good faith review and consider the objections by HBIA regarding the disputed invoice. In the event that the City and the HBIA are not able to agree within such ten (10) day period on a course of action with respect to the invoice, it shall be within the City's exclusive and sole discretion to pay the disputed invoice in full and HBIA shall be responsible for the full cost of the City's payment of the invoice so long as such invoice relates to the City's review, evaluation, consideration, or processing of the Applications.

10.4 All proposed Consultant Contracts shall provide that (i) Consultants shall bill only for their actual costs, with no premiums or surcharges on costs, expenses, sub-consultants or otherwise; (ii) copies of all invoices and appropriate supporting documentation, except those of outside counsel to the City, shall be made available to HBIA, subject to the exception described in Section 10.5; and (iii) Consultant invoices shall include sufficient detail regarding work performed and time incurred to allow reasonable review by the City and HBIA.

10.5 Nothing in this Agreement shall be construed to require the City to provide HBIA with documents, or portions of documents that are privileged, attorney work product, or attorney-client privileged.

10.6 In the event no PEA is executed by the City and HBIA prior to termination of this MOA, then within thirty (30) days following termination, the City shall deliver to HBIA electronic copies (or hard copies if electronic versions do not exist) of all work prepared to date by any Consultant, whether in draft or final form and in the City's files as of such date, including without limitation, all studies, reports, plans, drawings and similar work (the "Consultant Work"). With respect to work not in the City's files as of the date for compliance with this section, the City shall have no obligation beyond making a request that Consultant provide all work to the City. If Consultant Work has not been approved or adopted by city staff in writing, HBIA shall keep such work, including any documentation thereof in whatever form, confidential, and shall not share such work with any member of the public unless the City consents to such disclosure or such disclosure is required by law. HBIA shall hold the City, its officers and employees, harmless from and against any and all costs, including attorneys fees, damages, or liabilities incurred by HBIA and arising from HBIA's reliance on any Consultant Work that is delivered to HBIA in accordance with this Section 10.6. This obligation to hold the City harmless shall survive termination of this MOA pursuant to Section 1 above.

11. Evergreen Deposit. HBIA shall establish and fund a deposit account with the City, designed to ensure that the City is never required to perform work for which reimbursement funds have not been previously deposited (the "Evergreen Deposit") in accordance with a separate reimbursement agreement to be executed contemporaneously with this MOA.

12. City's Discretion & Independent Judgment. The Parties understand and agree that the City will perform an independent environmental review of the Approvals contemplated by this MOA and the PEA and the impacts associated with any contemplated development pursuant to the Approvals. The City retains its authority to certify or decline to certify an Environmental Impact Report ("EIR") in connection with the Applications, may consider and adopt any alternative to any development proposed by the Applications, including the "No Project" alternative, and may impose any conditions or mitigation measures on any Approvals as the City deems appropriate. Nothing in this MOA commits the City to any approval, vote or other outcome of the environmental review, any approval process, or action on the Applications.

This MOA shall not be construed as any preliminary or final approval of any land use decision and/or other discretionary process or approval not yet given by the City.

13. Indemnification & Cooperation in the Event of Legal Challenge.

13.1 HBIA Processing Challenge. An "HBIA Processing Challenge" is any claim, demand, proceeding, application, petition, complaint or action filed, brought, or otherwise commenced by HBIA, seeking to review, challenge, set aside, modify, overturn, supersede, or annul the City's review, evaluation, consideration, processing, or disposition of or decisions regarding the Approvals sought in the Applications. An HBIA Processing Challenge includes any such claim, demand, proceeding, application, petition, complaint or action in which HBIA purports to act as a "private attorney general." As to an HBIA Processing Challenge, HBIA and the City shall each remain liable for their respective attorneys' fees and costs of litigation and costs of experts and consultants retained in such litigation.

13.2 Indemnification for Project-Related Challenges. A "Project-Related Challenge" is: (i) any claim, demand, proceeding, application, petition, complaint or action filed, brought, or otherwise commenced by a third party seeking to review, challenge, set aside, modify, overturn, supersede or annul any provision of this MOA or the City's performance hereunder, or the City's review, evaluation, consideration, processing, or disposition of or decisions regarding the Applications or Approvals or a portion thereof and any combination thereof; or (ii) any other claim, demand, proceeding, application, petition, complaint or action filed, brought or otherwise commenced by HBIA (other than an HBIA Processing Challenge) or by a third party relating to the Approvals or any development contemplated thereunder or a portion thereof and any combination thereof, including those actions where the City determines, in its sole discretion, that it is obligated to defend the challenged action even if the effect of such action would be to impede development pursuant to the Approvals. As to any Project-Related Challenge by HBIA, HBIA shall be liable for, and shall reimburse to the City, the City's attorneys' fees and costs of litigation and costs of experts and consultants retained in such litigation. As to any Project-Related Challenge by a third party, HBIA shall fully indemnify, defend, release, and hold harmless the City, its officers, its employees, its consultants, and their agents from all financial and other liability related to such Project-Related Challenge, including but not limited to attorneys' fees and costs of litigation and costs of experts and consultants.

13.3 Cooperation in the Event of a Project-Related Challenge. In the event of any Project-Related Challenge by a third party, the Parties shall cooperate in defending against such challenge. Each Party shall promptly notify the other of any Project-Related Challenge by a third party of which it becomes aware. HBIA shall assist and cooperate at its expense with the City in connection with any Project-Related Challenge by a third party. If HBIA fails to make payment to the City for any costs in connection with defense of a Project-Related Challenge, as required by Section 13.4 below, the City shall have no obligation to continue its defense.

13.4 Reimbursement Relating to Project-Related Challenge. The City may use its own legal staff or outside counsel in connection with defense of any Project-Related Challenge, in the City Attorney's sole discretion, and the City shall have the right to select outside counsel of its choice, in its sole discretion. All costs to the City associated with its defense of any Project-Related Challenge, including but not limited to the time and expenses of the City Attorney's Office, other city staff, any Consultants or experts retained in connection with the Project-Related Challenge, attorneys' fees of the City's selected outside counsel, and litigation costs shall be fully reimbursed to the City by HBIA; provided HBIA shall have the right to monthly invoices for all such costs in the case of a Project-Related Challenge by a third party.

HBIA shall make payment to the City for any costs covered by this Section 13 within thirty (30) days of receipt of an invoice from the City for such costs.

13.5 Limitation on Remedies. In any action at law or equity or other legal or administrative proceeding arising out of or relating to this MOA, the PEA, the Applications, the City's review, evaluation, consideration, processing or disposition of the Applications, or the Approvals, including but not limited to any HBIA Processing Challenge or Project-Related Challenge, neither the City nor HBIA shall be entitled to damages or other remedies or relief except as expressly set forth in this Section 13.5. Permitted remedies shall include (i) mandatory or injunctive relief, (ii) writ of mandate, (iii) specific performance or termination of this MOA or the PEA, or (iv) a claim for reimbursement of unexpended funds advanced by HBIA to the City. Without limiting the generality of the foregoing, neither the City nor HBIA shall be liable, under any circumstances, for any direct, indirect, special, compensatory, consequential, reliance, punitive or exemplary damages, regardless of whether the claim for such damages is based on contract, tort, statute or other basis liability.

13.6 Continuing Rights, Obligations. The rights and obligations set forth in this Section 13 and in Section 14 shall survive termination of this MOA.

14. Cooperation with Golf Management Company. The Parties acknowledge that the City and HBIA will work in good faith with, and, consistent with this MOA, will coordinate their activities and plans with, any company that is under contract with the City to manage or lease the Golf Complex.

15. Default. If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this MOA, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within five (5) days of the notice. The Parties shall meet and confer regarding the alleged default no later than five (5) days after the notice. If the defaulting party is in default under this MOA and if the default is reasonably curable within a reasonable time not to exceed twenty (20) days, then the defaulting party shall have a reasonable period of time to cure the default provided that the defaulting party provides reasonable assurance, to the demanding party, within five (5) days after the demanding party's written notice of default, that the defaulting party has the intention and the capacity to cure the default within a commercially reasonable period, not to exceed twenty (20) days after the original notice of default was given. If the defaulting party does not give such reasonable assurance or if the defaulting party does not promptly undertake and diligently continue all reasonable actions to cure the default or if the default is not cured within such a reasonable time, not to exceed twenty (20) days, then the demanding party may terminate this MOA by giving notice to the defaulting party and, if such notice is given, then this MOA shall terminate. In the event of termination hereunder, neither party shall have any further rights or obligations pursuant to this MOA, except for HBIA's obligations to indemnify and reimburse the City for its costs and expenditures, which obligations shall survive termination. In the event the City terminates this MOA under this Section 15, the City shall retain the Initial Deposit. In the event HBIA terminates this MOA under this Section 15, the Initial Deposit shall be returned to HBIA.

16. Modifications. This MOA may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

17. Waivers. Waiver of a breach or default under this MOA shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this MOA.

18. Severability. In the event any term of this MOA is held invalid by a court of competent jurisdiction, the MOA shall be construed as not containing that term, and the remainder of this MOA shall remain in full force and effect.

19. Entire Agreement. This MOA, including all documents incorporated herein by reference such as Exhibit A, Exhibit B, and Exhibit C, comprises the entire integrated understanding between the Parties concerning the purpose of this MOA, as identified in Recital A. This MOA supersedes all prior negotiations, representations, or agreements pertaining to the transaction contemplated herein, but has no effect on the Development Agreement to which the City and HBIA are parties or any other agreement pertaining to the development which HBIA has pursued or completed pursuant to the Development Agreement.

20. Notices. All notices to be given hereunder shall be in writing and may be personally delivered, mailed or sent by recognized overnight courier to the respective party at the addresses set forth below (either party may modify its addresses for notices by providing written notice to the other party). Any notice shall be deemed to have been given and received on the first to occur of: (a) actual receipt at the address set forth below, (b) the first business day after deposit with such a recognized overnight courier for delivery on the next business day, or (c) three working days following the deposit in the United States Mail of registered or certified mail sent to the address set forth below.

City:

City of Alameda
2263 Santa Clara Avenue
Room 320
Alameda, CA 94501
Attn: John A. Russo, City Manager

With copies to:

City of Alameda
2263 Santa Clara Avenue
Room 280
Alameda, CA 94501
Attn: City Attorney

Perkins Coie LLP
Four Embarcadero Center
Suite 2400
San Francisco, CA 94111
Attn: Cecily T. Barclay

HBIA:

Harbor Bay Isle Associates
1141 Harbor Bay Parkway, Suite 221
Alameda, CA 94502
Attn: Tim Hoppen

With copy to:

Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482
Attn: Zane O. Gresham

21. Time of the Essence. Time is expressly declared to be of the essence in this MOA.

22. Assignment. HBIA shall have no right to sell, assign, or transfer its rights under this MOA to any third parties or entities.

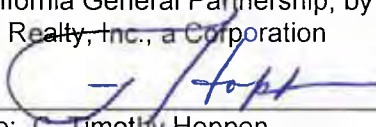
23. Signatures. The individuals executing this MOA represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this MOA on behalf of the respective legal entities of HBIA and the City. This MOA shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the Parties do hereby agree to the full performance of the terms set forth herein.

CITY OF ALAMEDA

By: _____
Name: Marie Gilmore
Title: Mayor
Date: _____, 2011

HARBOR BAY ISLE ASSOCIATES,
a California General Partnership, by
Doric Realty, Inc., a Corporation

By:  _____
Name: C. Timothy Hoppen
Its President
Date: Sept 21, 2011

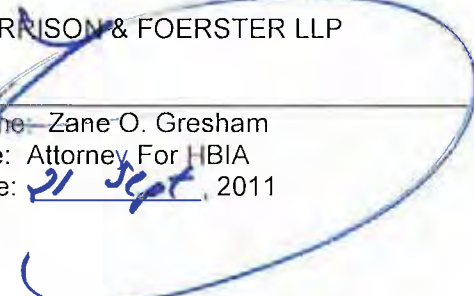
Attest:

By: _____
Name: Lara Weisiger
Title: City Clerk
Date: _____, 2011

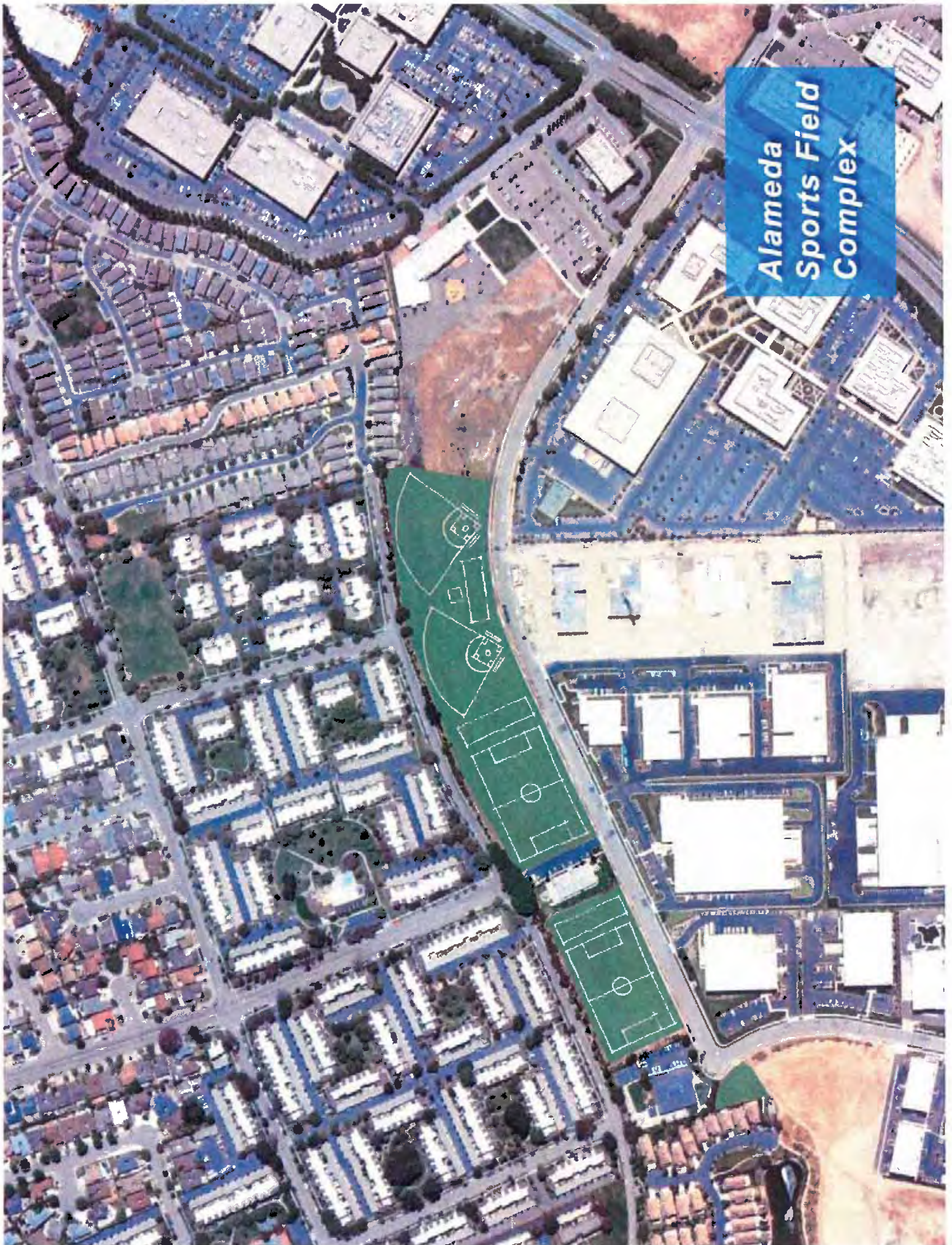
Approved As To Form:

By: _____
Name: Donna Mooney
Title: City Attorney
Date: _____, 2011

Approved As To Form:

MORRISON & FOERSTER LLP
By:  _____
Name: Zane O. Gresham
Title: Attorney For HBIA
Date: 21 Sept, 2011

**Alameda
Sports Field
Complex**



RENOVATION CONCEPT

Chuck Corica Golf Complex

ALAMEDA, CALIFORNIA



Knott & Lima
golf design group

445 N. Wilburton Road, Suite 403, Alameda, CA 94501
phone: 925-965-9038 fax: 925-965-9411

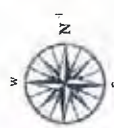
Date: April 15, 2011 rev May 5, 2011
Scale: 1" = 200'

SOUTH COURSE:

HOLE	BLUE	WHITE	RED	PAR	HOLE	BLUE	WHITE	RED	PAR
1	560	560	4	4	17	420	420	4	4
2	268	268	3	3	18	170	170	3	3
3	535	535	4	4	19	410	410	4	4
4	370	370	3	3	20	330	330	4	4
5	370	370	4	4	21	330	330	4	4
6	315	315	3	3	22	350	350	4	4
7	440	440	5	5	23	155	155	3	3
8	180	180	3	3	24	695	695	5	5
9	390	390	4	4	25	410	410	4	4
TOTAL	3115	3115	35		TOTAL	3115	3115	35	
All Distances in Yards									
TOTAL 3530 10									

HOLE	BLUE	WHITE	RED	PAR
1	100	125	5	5
2	140	110	3	3
3	125	105	3	3
4	125	105	3	3
5	130	95	3	3
6	70	135	3	3
7	105	120	3	3
8	105	120	3	3
9	140	110	3	3
TOTAL	1245	1260	27	

All Distances in Yards



Distances within 66 feet Aug. 2010 (for report)



Site Summary

Lots: 130 (35'x70')
 Site Area: 12.2 Ac.
 Density: 10.7 Du/Ac
 Guest Parking: 57 Spaces



RUGGERI-JENSEN-AZAR
 ARCHITECTS
 4800 CALVERT DRIVE, SUITE 200, EL PASO, TEXAS 75244
 PHONE: (957) 527-9100 FAX: (957) 527-1800

PRELIMINARY SITE PLAN - CHUCK CORICA GOLF COURSE
 CITY OF ALAMEDA, ALAMEDA COUNTY, CALIFORNIA

DATE: SEPTEMBER 13, 2011

JOB NO.: 11078