



April 25, 1989

APR 27 1989

Stephen Brimhall
Executive Vice President
Doric Development Inc.
1141 Harbor Bay Parkway
P.O. Box 1450
Alameda, CA 94501

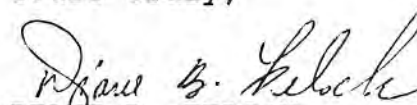
Re: Extension and
Modification Agreement

Dear Mr. Brimhall:

Enclosed is a fully executed copy of Extension and Modification Agreement, as authorized by the City Council, for your records.

Certified copies are also enclosed pursuant to your request.

Yours truly,


DIANE B. FELSCH
City Clerk

DBF/

Enclosures

EXTENSION AND MODIFICATION AGREEMENT

THIS AGREEMENT is entered into this 22 day of MARCH, 1989 by and between the CITY OF ALAMEDA, a municipal corporation of the State of California ("City"), and HARBOR BAY ISLE ASSOCIATIONS, a general partnership, HARBOR BAY VILLAGE FOUR ASSOCIATES, a general partnership, and HARBOR BAY VILLAGE FIVE ASSOCIATES, a general partnership (collectively "HBI").

WHEREAS, City and HBI entered into a Settlement Agreement on November 3, 1988; and


WHEREAS, City and HBI wish to extend the time period for taking certain actions under the Settlement Agreement from March 31, to April 4, 1989.

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein, the parties agree that all references to March 31, 1989 in the Settlement Agreement are extended to and include April 4, 1989.

Approved as to form:

CITY OF ALAMEDA, a municipal corporation of the State of California


BRUCE QUAN, JR.
Interim City Attorney


By 
MAYOR
Its _____


Authorized by Council Resolution No. _____

Adopted _____

This is a true and correct copy of the original document on file with the City Clerk.

HARBOR BAY ISLE ASSOCIATES, a general partnership

By 
Its EXECUTIVE VICE PRESIDENT



Diane B. Felsch, CMC

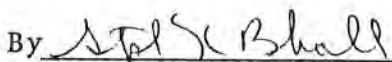
HARBOR BAY VILLAGE FOUR ASSOCIATES, a general partnership

By DORIC DEVELOPMENT, INC.
General Partner

HARBOR BAY VILLAGE FIVE ASSOCIATES, a general partnership

By DORIC DEVELOPMENT, INC.

By 
Its EXECUTIVE VICE PRESIDENT

By 
Its EXECUTIVE VICE PRESIDENT

ORIGINAL

3-15-89

cc: NW DR
MB TV
TH CD
AB

SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into this 31st day of November, 1988, by and between the CITY OF ALAMEDA, a municipal corporation of the State of California ("City"), and HARBOR BAY ISLE ASSOCIATES, a general partnership, HARBOR BAY VILLAGE FOUR ASSOCIATES, a general partnership, and HARBOR BAY VILLAGE FIVE ASSOCIATES, a general partnership (collectively "HBI").

WHEREAS, by this Agreement the parties desire to provide for: Settlement of existing lawsuits between HBI and City; all approvals and permits necessary for the build out of the remaining HBI residential and Business Park property; and all property or monetary exactions, fees, or other charges that are or could be required for the build out under prior or existing agreements between HBI and its predecessors and City, and/or those that have or could be imposed as a result of existing and/or future law, unless specifically provided to the contrary herein; provided, however, that this Agreement shall not prevent City from implementing mandated State or Federal legislation; and

WHEREAS, HBI and City have previously established four Assessment Districts in the HBI Business Park for the purpose of funding major public improvements such as the cross town sewer on the Main Island of Alameda, the Maitland Drive resurfacing project, the Bridgeway sewer pump station, the Harbor Bay Parkway construction, including the Harbor Bay Parkway-Doolittle Drive intersection, Golf Course drainage improvements, and Bay-edge Park improvements; and such Districts have resulted in liens per acre in the Business Park of between \$100,000 to \$150,000 per acre; and

WHEREAS, City and HBI believe the use of another type of Assessment District known as a Mello-Roos Community Facilities District for Village V can provide the necessary funds for public schools, parks and fire prevention facilities for the HBI project;

NOW, THEREFORE, the parties agree as follows:

1. School Site. A site for a second school in Harbor Bay Isle shall be provided as follows:

The presently reserved approximately eight-acre school site in Village IV of Harbor Bay Isle shall be purchased with funds from a Mello-Roos Community Facilities District ("CFD") (established pursuant to

CORRECTED PER JBD
MEMO OF 2-22-89

paragraph 6 below) from HBI for the agreed 1980 fair market value of \$292,500 per acre. Title to the site shall be transferred to City within 10 business days after said CFD funds are available for said purchase. Said conveyance to City shall contain a reverter to HBI in the event that the property is not used exclusively for purposes of constructing and operating a public school within ten years after the date of such conveyance. City shall convey said property to the Alameda Unified School District ("AUSD") without cost to AUSD subject to said reverter within 30 days after City accepts such conveyance from HBI. In the event that AUSD fails to commence such public school construction within said ten year period and the property reverts to HBI, City shall have 90 days in which to exercise a right to purchase said property, or any part thereof, from HBI for the sum of \$292,500.00 per acre. City's right to purchase shall be conditioned upon the requirement of a City Council resolution setting forth immediate public use for said property.

2. Harbor Bay Isle Public Parks.

(a) HBI shall dedicate to City without cost to City the remaining approximately seven and one-half acres of shoreline park in Tract 4500. Such dedication shall occur at the time of recordation of final maps on adjacent properties.

(b) HBI shall dedicate on or before March 31, 1989, the approximately four-acre park site presently reserved in Village IV to City.

(c) The parties shall agree on or before March 31, 1989 on the timing, scope and nature of the improvements to and maintenance of the entire Tract 4500 shoreline park and the approximate four-acre interior park site described above. An amount equal to the dwelling unit tax that would be collected by City on construction of Village V residential units (approximately \$550,000) shall be paid with CFD funds to City toward the cost of such improvements, and City agrees to accept such payment as the dwelling unit tax payment. An additional \$650,000 shall be paid to City with CFD funds and an additional \$300,000 shall be paid to City from a Harbor Bay Isle Business Park Assessment District or a Business Park Mello-Roos CFD. The balance of funds required, if any, for improvement of the park sites shall be provided by City from any other source. Excess funds, if any, may be used by City for payment of costs associated with Harbor Bay Isle Fire Station construction or purchase of fire apparatus for the

Harbor Bay Isle Fire Station. Payments to City shall be made on a progress basis as work is completed.

3. Harbor Bay Isle Fire Station.

(a) HBI shall dedicate up to one acre of land in Village V as a site for a second fire station. Said fire station may include therein a room for a police facility. City shall use its best efforts to design the station to require less than one acre of land. In the event the site requires less than one acre, HBI shall allocate the difference between one acre and the amount actually required to additional neighborhood open space in Village V. Such neighborhood open space shall be developed by HBI and maintained by a Homeowners Association. The dedicated land shall be used only for purposes of constructing and operating a fire station/police facility. If no such facility is constructed on the land within five years, the land shall revert to HBI.

(b) City agrees that the design and landscaping of the fire station shall be performed by City staff and be subject to exterior design approval by the HBI Architectural Review Committee. In the event that the HBI Architectural Review Committee requires an exterior design that exceeds the existing Village IV residential exterior design standards, HBI shall pay for the difference in construction costs required by such increased standards.

(c) CFD funds in the amount of \$750,000 shall be paid to City for construction of a new fire station and/or fire apparatus for Bay Farm Island. Such payments shall be made on a progress basis as work is completed.

(d) City agrees that compliance by HBI with all terms of this paragraph 3 shall satisfy Condition 69 of Planning Board Resolution 1203 and Condition 69 of Planning Board Resolution 1533. e

4. Recreational Vehicle Parking, Boat Storage, and Mini-Warehouse Facility.

(a) In return for dedication to City of the approximately four-acre interior park site described in paragraph 2(b) above, City shall lease that certain parcel of City-owned land currently leased to the Island City Gun Club to HBI or its assigns for use for recreational vehicle parking, boat storage, and a mini-warehouse facility. The lease shall be for a period of

25 years for an annual rental amount equal to 50% of the net income from operating these facilities, but in no event shall the rent be less than \$5,000 per year with an annual Consumer Price Index adjustment after the first year. For purposes of this Agreement, net income shall equal the gross income from all activities conducted on the premises less all costs of such activities, including, but not limited to, costs of operation, repair, maintenance, security, insurance, taxes, utilities, interest on financing incurred for purposes of acquiring the Island City Gun Club lease and improving the property, and costs of improving the property and acquiring the Island City Gun Club lease, amortized over the 25-year life of the lease. City shall have the right to audit all financial records of the facility at any reasonable time. City shall approve any subleases or assignments for operation of the facilities. Such right of approval shall not be unreasonably withheld by City. HBI shall have one option to extend the lease for an additional 25-year period on the same terms and conditions.

(b) Improvement, landscaping and allocation of space on this site between recreational vehicle parking, boat storage and mini-warehouse facilities shall be by mutual agreement between City and HBI. Space allocation shall be based upon market demand. Initially the facility shall be open to the public. Should demand for the facility exceed capacity, HBI residents shall have priority. Non HBI residents who live in Alameda shall be entitled to space on a first in last out basis. On the expiration of the lease, all improvements shall become the property of City.

(c) HBI shall pay for the cost of acquisition of the Island City Gun Club interest in its lease agreement with City.

(d) For a six-year period commencing upon the date of execution of this agreement, HBI shall reserve three acres of land in the Business Park for additional recreational vehicle parking, boat storage and mini-warehouse facilities in the event that the Gun Club site is not adequate for Harbor Bay Isle residents.

(e) HBI shall pay all costs of improving said site.

(f) In the event that HBI fails to improve said Gun Club site and open for business within one year after City approves a vesting tentative subdivision map for HBI's revised Village V plan with conditions

satisfactory to HBI, HBI agrees to pay to City liquidated damages. Since it is difficult to estimate damages, it has been agreed that liquidated damages shall be \$5,000.00 per year payable annually in advance. Said liquidated damages shall not exceed the sum of \$50,000.00.

(g) City agrees that compliance by HBI with all the provisions of this paragraph 4 shall satisfy Condition 16 of Planning Board Resolution 1203 and Condition 8(a) of Planning Board Resolution 1205.

5. Failure to Acquire Gun Club Leasehold.

In the event that, on or before the date of final approval by City of a vesting tentative map and development agreement for HBI's revised Village V Plan, the Island City Gun Club refuses to accept a reasonable sum and convey said leasehold interest to City, HBI and City shall be temporarily jointly released from performance of all the terms and conditions of paragraph 4 of this agreement. Upon the date of said approvals without such conveyance by Gun Club to City, HBI shall temporarily provide for its recreational vehicle, boat storage and mini-warehouse facility obligations as follows:

(a) HBI shall immediately commence all steps necessary to start construction at the earliest possible date of a four-acre facility in the HBI Business Park. Said facility may be constructed in phases to meet market demand. Said facility shall be limited to use by HBI residents only, unless HBI shall decide to open said facility to wider use because of lack of demand.

(b) At such time as City acquires the gun club lease either at the expiration of the lease or on earlier termination thereof, the provisions of paragraph 4 shall again apply. Provided, however, that City shall allow HBI to amortize its four-acre facility improvements prior to moving such facility from the HBI Business Park to the gun club site. Such amortization period shall not exceed five years from the date of opening for business of the four-acre facility.

(c) City agrees that compliance by HBI with all the provisions of this paragraph 5 shall satisfy Condition 16 of Planning Board Resolution 1203 and Condition 8(a) of Planning Board Resolution 1205.

6. Mello-Roos. City and HBI on or before March 31, 1989, shall take all steps necessary for

establishment of a Mello-Roos Community Facilities District in the approximate amount of \$11,000,000.00 for the real property in Harbor Bay Isle Village V. Said \$11,000,000.00 may include \$1,800,000.00 for Village V school fees paid in advance in the event that HBI and AUSD have reached a written agreement concerning the payment of said fees.

7. Village V.

(a) City agrees that the approvals previously granted HBI by City for the Village V portion of Tract 4500 in Planned Development PD-81-2 and for the Village V portion of the tentative map for Tract 4500 shall remain in full force and effect unless precluded by the State Subdivision Map Act or until abandoned in writing by the applicant or its successors-in-interest, or until superseded by the final approval of a vesting tentative map and development agreement for Village V.

(b) HBI's new development plan and subdivision map for Village V shall provide for at least 200 homes less than the currently approved 839 homes for Village V.

8. Access and Infrastructure.

(a) City agrees that improvement taxes on all construction in Harbor Bay Isle and 50% of incremental Business Park property taxes shall be set aside by City and expended only on infrastructure projects relating to Harbor Bay Isle and Bay Farm Island access, which shall include, but not be limited to: (i) The City's requirement for HBI to widen Doolittle Drive, widen Otis Drive at Fernside Boulevard, modify the Island Drive and Doolittle Drive intersection, and modify other intersections impacted by traffic generated by the Harbor Bay Isle project as said intersections are identified in the Traffic Study dated September 1988 prepared by Abrams Associates for the Mayor's Transportation Task Force or any subsequent traffic study prepared for and adopted by said Task Force; and (ii) 100% of City's share of the cost of realignment of the Maitland Drive-Harbor Bay Parkway intersection, intersection signalization on Bay Farm Island, and costs allocated to City relating to the Cross-Airport Roadway project including construction costs on approval of such project.

(b) Upon certification by the lead agency of an EIR covering the construction of the Cross Airport Roadway, City shall support such construction if the

project can demonstrate that it will have a net benefit to the City. City shall support construction of the necessary improvements relating to Doolittle and Otis Drives.

(c) HBI shall be responsible for costs in relation to the access projects described above that exceed the amounts provided above.

9. Miscellaneous.

(a) HBI shall complete dredging of the lagoon in Tract 3810 at no cost to City. On completion of all lagoon conditions including dredging, City shall accept the Tract 3810 lagoon and thereafter maintain it for storm drainage purposes.

(b) HBI shall continue to negotiate with the Port of Oakland to provide an acceptable agreement concerning storm water drainage into the airport lagoon.

(c) HBI shall pay for construction of a cul-de-sac at the east end of Catalina Road based on designs mutually agreeable by the parties.

(d) HBI shall, on or before March 31, 1989, complete Conditions 20, 48 and 60 of the approval of the planned development for Tract 3810 set forth in Planning Board Resolution 950. City agrees all other conditions of approval of Tract 3810 in relation to planned development or subdivision approval, as set forth in Planning Board Resolutions 950 and 963 and City Council Resolution 8870, have been satisfied.

(e) HBI shall complete all conditions of Tract 4500 as they now exist or as they may be changed from time to time by mutual agreement of the parties. These conditions are set forth in Planning Board Resolutions 1203, 1205 and 1533 and City Council Resolution 9665. City agrees that Conditions 59 and 67 of Resolution 1203, Conditions 1 and 21 of Resolution 1205, and Conditions 67 and 72 of Resolution 1533 have been satisfied. City further agrees that compliance by HBI with the provisions of paragraphs 3, 4 and 5 above shall satisfy Conditions 16 and 69 of Planning Board Resolution 1203, Condition 8(a) of Planning Board Resolution 1205, and Condition 69 of Planning Board Resolution 1533.

(f) City and HBI shall cooperate with each other and shall do all things necessary to enable each to perform as agreed herein.

(g) Certain portions of this Agreement represent an exercise of its police power by City, but nothing herein shall be construed as a waiver by City of its police power.

10. Exactions. City agrees that the property and monetary exactions required of HBI under this Agreement shall, when accomplished, satisfy all exactions that can be required of HBI for any purpose for completion of the build out of all HBI residential units and Business Park and that no further exactions of any nature shall be required of HBI for any purpose. Provided, however, that this paragraph shall not apply to major future changes in the HBI project and shall not prevent City from implementing mandated State or Federal legislation.

11. Conditions Precedent. All acts, forbearances or other obligations of HBI pursuant to this Agreement shall be conditioned upon City's performance of all of its obligations hereunder and upon the following additional conditions:

(a) That after appropriate compliance with CEQA, City certifies and approves as adequate for zoning, development, subdivision and construction of the new plan for Village V and of the Business Park the existing A. D. Little Environmental Report as augmented by subsequent investigation, studies and environmental impact reports or other environmental determinations heretofore made, and that City require no new, subsequent or supplemental environmental impact report;

(b) That City does not adopt or in any way impose any requirement that will directly or indirectly result in a moratorium limitation or rationing of development approvals, subdivision approvals, or issuance of building permits for Village V or the Harbor Bay Isle Business Park;

(c) Until such time as the Vesting Tentative Map and Development Agreement for the revised Village V Plan are approved, no conditions shall be added by City to approvals of development plans, subdivision approvals and building permits for Village V and the Harbor Bay Isle Business Park without the consent of HBI. Such consent shall not be unreasonably withheld by HBI.

(d) That, as expeditiously as possible and in any event no later than December 20, 1988, City approve the vesting tentative map and final map for Tract 4499,

issue building permits for the construction of the 42 single-family dwelling units provided thereby, and credit HBI with the sum of \$296,402.30 against the payment of building permit fees and taxes payable for the 42 units. Said sum is the amount reimbursable to HBI on the 54 units already paid by HBI to City;

(e) That City, in good faith and through the exercise of its best efforts, cooperate with HBI in reaching agreement no later than March 31, 1989, on the terms and conditions of a Development Agreement for the revised plan for Village V;

(f) That City will not unreasonably withhold approvals and permits necessary for construction of a ferry terminal located at the end of McCartney Road between Village V and the Business Park, with limited access from McCartney Road and unlimited access from the Business Park, so long as such terminal can demonstrate a net benefit to City;

(g) That on or before March 31, 1989 City approve the method and provide all approvals and permits necessary for construction of a limited access roadway connection between Village V and the Business Park;

(h) That on or before March 31, 1989, City adopt necessary ordinances and regulations permitting start of work within five business days after submittal of plans and specifications for tenant improvements. Such ordinances and regulations shall provide that if a permit is not issued by the date of the first required City building inspection that the contractor will stop work or be subject to penalty fees.

(i) That no later than March 31, 1989, HBI and City shall enter into a written agreement setting forth existing and anticipated future issues and problems involving access to Harbor Bay Isle and Bay Farm Island and the responsibilities of City and HBI in regard to planning and funding solutions to those problems;

(j) That on or before March 31, 1989 City shall approve a vesting tentative subdivision map for no more than 639 residential units for HBI's revised Village V plan with conditions approved by HBI;

(k) That on or before March 31, 1989 City shall either agree in writing or take appropriate action to provide that the construction of the recreational vehicle parking, boat storage and mini-warehouse storage

facility on the Gun Club site, along with the dedication of the four-acre park site set forth in paragraph 2(b) above, and the reservation of a three-acre reserve site in the Business Park for five years set forth in paragraph 4(d) above shall be deemed as satisfaction of all recreational vehicle, boat and mini-warehouse storage conditions previously imposed upon HBI by City. Provided, however, that in the event that the Gun Club site does not become initially available for such storage facility on or before March 31, 1989 City shall either agree in writing or take appropriate action to provide that the construction of such storage facility on the four-acre site in the Business Park by HBI as set forth in paragraph 5 above, along with the dedication of the four-acre park site set forth in paragraph 2(b) above shall be deemed as satisfaction of all recreational vehicle, boat and mini-warehouse storage conditions previously imposed upon HBI by City;

(1) That on or before March 31, 1989 City shall take such action as is necessary to delete the requirement of dedication of Parcel T, Block 7, in Tract 4500 as a condition of approval of Parcel Map 5274;

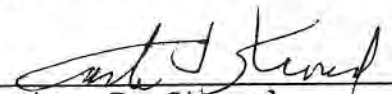
(m) That on or before March 31, 1989 City shall either agree in writing or take appropriate action to provide that conditions 1, 4 and 5 of Planning Board Resolution 1816 pertaining to Tract 4499 as modified on appeal by the City Council are either deemed as satisfied by City or deleted.

1806

12. Litigation. Upon the fulfillment of all conditions relating to approvals and permits for construction of the residential units for Village V and Tract 4499, and the execution of all further agreements provided for herein, the parties hereto shall mutually dismiss with prejudice on the merits the two lawsuits now pending in the Alameda County Superior Court, Nos. 638804-1 and 461005-0.

Approved as to form:

CITY OF ALAMEDA, a municipal corporation of the State of California


Carter J. Stroud
City Attorney

By 

Authorized by Council Resolution No. 11591

Its **MAYOR**

Adopted NOV 3 1988

HARBOR BAY ISLE ASSOCIATES, a
general partnership

By DORIC DEVELOPMENT, INC.,
General Partner

By APL Y Bhal
Its EVP

HARBOR BAY VILLAGE FOUR
ASSOCIATES, a general
partnership

By DORIC DEVELOPMENT, INC.,
General Partner

By APL Y Bhal
Its EVP

HARBOR BAY VILLAGE FIVE
ASSOCIATES, a general
partnership

By DORIC DEVELOPMENT, INC.,
General Partner

By APL Y Bhal
Its EVP