

**AGREEMENT FOR DEFERRAL OF PAYMENT OF ON/OFF SITE
PERMIT FEES FOR STAGE 1 OF HILLCREST SUBDIVISION**

This Agreement for Deferral of Payment of On/Off Site Permit Fees for Stage 1 of Hillcrest Subdivision (“Agreement”), dated May 25, 2023 (“Effective Date”), is entered into by and between the CITY OF WATSONVILLE, a municipal corporation organized and existing under the laws of the State of California (“City”) and LANDO HILLCREST, LLC, a California corporation, (“Developer”) on the following terms and conditions. City and Developer shall be referred to collectively as “parties”.

RECITALS

WHEREAS, Developer has filed with the City certain improvement plans for Stage One of the Hillcrest Subdivision herein called "Project," which improvement plans are designated “Stage 1 Improvement Plans For Hillcrest 511 Ohlone Parkway Watsonville, California 95076”, APNs 018-372-14 and 018-381-01, prepared by RAMSEY CIVIL ENGINEERING INC, dated May 10, 2022 and revised November 3, 2022 (the “Stage One Improvement Plans”); and

WHEREAS, on August 28, 2018, the City Council of the City of Watsonville approved the development of Tract 1607 located in the City of Watsonville, consisting of the construction of 150 dwelling units on individual parcels on a 13± acre site located at 511 Ohlone Parkway, Watsonville, California (APNs 018-372-14 & 018-381-01); and

WHEREAS, on July 6, 2021, the City Council of the City of Watsonville adopted Resolution No. 210-21 (CM) approving a First Amended Tentative Map for Tract No. 1607, Resolution No. 211-21 (CM) approving a Major Modification to the Special Use Permit with Design Review & Specific Development Plan for Application No. PP2017-116, and Resolution No. 212-21 (CM) approving Addendum No. 2 to the Previously Certified Final EIR (PP2016-199), (together, “Project Approvals”), reducing the number of dwelling units from 150 to 144, to allow for the construction of Project subject to Developer complying with certain conditions set forth therein; and

WHEREAS, on April 26, 2022, the City Council of the City of Watsonville approved a development agreement to allow for the construction of Project to be completed in 5 phases extending to 2026; and

WHEREAS, certain work and improvements required by Title 13 of the Watsonville Municipal Code have not been completed, to wit: the work and improvements required as conditions for approval of this Project, including, street improvements, utilities, and site landscaping improvements (including common use areas and other site features) (the “Stage One Improvements”) all to be built or completed in accordance with Stage One Improvement Plans on file with, and approved by the City Engineer; and

WHEREAS, the approval of the Stage One Improvement Plans and the Project final map are conditioned upon the execution by Developer of a Public On-Site Improvement Agreement; and

WHEREAS, on December 5, 2022, the City Council of the City of Watsonville approved

a Public and On-site Improvement Agreement with Developer dated December 15, 2022; and

WHEREAS, pursuant to Section 19 of the Public and On-site Improvement Agreement, Developer’s contractor is required to obtain an On/Offsite Permit for the proposed improvements and provide an insurance certificate meeting the requirements of insurance set forth in the Public and On-site Improvement Agreement; and

WHEREAS, the City has established a regular program of the payment of On/Offsite Permit Fees, which are identified in sections A (Engineering Services), B (Inspection) and C (Encroachment Permit Fees) of Attachment A (Fee Sheet-Improvement Agreement) of the Public and On-site Improvement Agreement relating to the Project, totaling \$94,315 (“Fees”) and more specifically described in Section 2.1; and

WHEREAS, these Fees are typically due and payable at the time the applicant submits an application to the City for the On/Offsite Permit; and

WHEREAS, Developer has requested that the payment of the Fees be deferred for thirty (30) calendar days; and

WHEREAS, the City has determined that because of the unique circumstances presented, the short duration of the deferral of payment and the public benefits that would be derived from the continuance of the Project, that the Fees should be deferred in accordance with the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The parties agree that the Recitals are true and correct and are a substantive and integral part of this Agreement and are incorporated by reference as operative provisions of this Agreement.

2. Deferral and Payment.

2.1 City’s Deferral. The City agrees that Developer may defer payment of the Fees for thirty (30) calendar days from the Effective Date of this Agreement. The Fees are broken down as follows:

A. Engineering Services	
Improvement plan & CC&R’s check =	\$ 41,471.00
Drainage Study review =	\$ 1,050.00
MWELo review =	\$ 140.00

Structural review =	\$ 1,150.00
Addressing fee =	\$ 350.00
Final Map review fees =	\$ 3,110.00
Final Map recordation =	\$ 356.00
Subdivision Agreement Preparation =	\$ 10,461.00
Map Processing =	\$ 6,225.00
B. Inspection	
Inspection fee (5206) =	\$ 29,225.00
C. Encroachment Permit Fees	
	\$ 777.00
Total Fees	\$94,315

The parties acknowledge that City normally requires the payment of all Fees at the time the project applicant submits an application to the City for an On/Offsite Permit. In this case, by virtue of this Agreement, the City will issue the On/Offsite Permit, provided all other requirements for the issuance of such On/Offsite Permit have been met, including insurance obligations, even though the Developer will not have paid the Fees. City shall have no obligation to issue any other permits or authorizations for any other portion of the Project until Developer has paid all other applicable fees in full, when those fees are due and payable.

2.2 Payment of Fees. The Fees shall be paid by the Developer by 5:00 p.m. on or before the thirty-first (31st) calendar day after the Effective Date of this Agreement (**Monday, June 26, 2023**) (“Due Date”). If the Developer fails to pay the Fees on or before the Due Date, the parties agree that the On/Off Site Permit shall be deemed null and void and may no longer be utilized by the Developer for the Project.

2.3 Developer’s Obligation to Pay Fees. Developer has the absolute obligation to pay the entire outstanding balance of the Fees. Notwithstanding the provisions of this Agreement granting Developer permission to defer payment of the Fees, such deferred payment shall not be deemed to waive all or any portion of Developer’s obligation to pay other fees or security relating to the Project including, but not limited to, those impact fees identified in Section G of Attachment A of the Public and On-site Improvement Agreement. Failure to fully pay the Fees by the Due Date in accordance with Section 2.2 shall be deemed a breach and default of the Agreement.

2.4 Deferral is not Payment of Public Funds. The parties, having each researched California Prevailing Wage Law (California Labor Code Section 1720 et seq.) and agree that the deferral of the payment of the Fees for thirty (30) days is not a public works project subject to the prevailing wage requirements. The deferral is instead a market transaction providing the Developer additional time to pay the required Fees. Notwithstanding this understanding, Developer acknowledges that if the Department of Industrial Relations determines that the deferral of Fees for

thirty (30) days constitutes the payment of public funds for the Project, and that the deferral of the Fees or the Project is not otherwise exempt from the payment of prevailing wages under Labor Code Section 1720 *et seq.*, then the Developer shall be fully responsible for payment of prevailing wages and overtime and holiday wages determined by the Department of Industrial Relations under Section 1720 *et seq.*, of the California Labor Code for all work performed on the Project. Developer reserves the right to contest any such determination or ruling.

3. General Indemnity.

3.1 General Indemnity. Except as to the sole negligence, active negligence or willful misconduct of the City, Developer expressly agrees to, and shall, indemnify, defend, release, and hold the City, and its respective officials, officers, employees, agents, and contractors harmless from and against any action, liability, loss, damage, entry, judgment, order, and lien, which arises out of, or are in any way related to, any act or omission of Developer, or its officers, directors, employees, agents, or contractors, connected with the performance under this Agreement, the construction, use, or operation of the Project, notwithstanding that the City may have benefited therefrom, or any challenge to this Agreement. This Section shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Developer's officers, directors, employees, agents and contractors. The City shall not be responsible for any acts, errors or omissions of any person or entity except the City and its officers, agents, servants, employees or contractors. The Parties expressly agree that the obligations of Developer under this Section shall survive the expiration or early termination of the Agreement.

3.2 Prevailing Wage Indemnification and Waiver of Actions. Developer, for itself and its contractors, hereby expressly agrees that City has satisfied its obligations under the California prevailing wage laws to identify projects as being subject to the prevailing wage laws and any other obligations imposed upon the City under Labor Code Sections 1726 and/or 1781 that are owed to or may be actionable by Developer and its contractors. Furthermore, Developer, for itself and its contractors hereby expressly waives any right of action against the City created under Labor Code Sections 1726 and/or 1781, whether known, or unknown, foreseen or unforeseen relating to the Project and/or any public improvement. Developer hereby agrees and covenants to require this express waiver in all construction contracts undertaken for the development of the Project. Further, Developer expressly agrees to, and shall, indemnify, defend, release, and hold the City, and its respective officials, officers, employees, agents, and contractors harmless from and against any Action, liability, loss, damage, entry, judgment, order, and lien, which arises out of, or are in any way related to or imposed upon the City under Labor Code Sections 1720 *et seq.* that the Project and/or any public improvement is subject to the prevailing wage laws and that payment of prevailing wages are owed to or may be actionable by Developer and its contractors and/or sub-contractors. The Parties expressly agree that the obligations of Developer under this Section shall survive the expiration or early termination of the Agreement. The City shall cooperate with Developer in any claim raised against either that is within the scope of this indemnification. The Developer shall, at its expense, hire counsel to defend the City and Developer.

4. Default And Remedies. Either party's failure or unreasonable delay to perform any term or provision of this Agreement constitutes a Default of this Agreement. In the event of a Default, the injured party shall give written "Notice of Default" to the defaulting party, specifying the

Default. Delay in giving such notice shall not constitute a waiver of the Default. If the defaulting party fails to cure the Default within five (5) calendar days after receipt of a notice specifying the Default, the defaulting party fails to commence to cure the Default, then the defaulting party shall be liable to the injured party for any and all damages caused by such Default, unless otherwise provided for by this Agreement.

4.1.1 If the Developer fails to pay the Fees on or before the Due Date, the City shall not be obligated to provide Notice of Default in the manner described above and the On/Off Site Permit shall be deemed null and void.

4.1.2 The parties agree that any Default of Developer under this Agreement shall also be considered a breach and default of this Agreement and the City may, in its sole discretion, proceed with providing the Developer Notice of Breach and Default pursuant to sections 23-25 of the Public and On-site Improvement Agreement with Developer dated December 15, 2022.

4.2 Termination. This Agreement may be terminated at any time for any reason by either party upon five (5) calendar days' written notice. If this Agreement is terminated prior to the Due Date for payment identified in Section 2.2, all Fees shall be immediately due and payable to the City upon termination.

4.2 No Waiver. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times. The waiver of any terms, covenants or conditions hereof shall be null and void unless in writing and approved in accordance with terms hereof.

4.3 Legal Actions. In addition to any other rights and remedies any party may institute a legal action to require the cure of any default and to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. The following provisions shall apply to any such legal action:

4.3.1 Jurisdiction and Venue. Legal actions must be instituted and maintained in the Superior Court of the County of Santa Cruz, State of California.

4.3.2 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

4.3.3 Attorneys' Fees. In the event either party commences an Action against the other party which arises out of a Default of, breach of, failure to perform, or that is otherwise related to, this Agreement, then the Prevailing Party in the action shall be entitled to recover its litigation expenses from the other party in addition to whatever relief to which the prevailing party may be entitled. For the purpose of this section, "Prevailing Party" shall have the meaning ascribed in §1032(a) (4) of the California Code of Civil Procedure.

4.4 Rights and Remedies are Cumulative. The rights and remedies of the parties are cumulative, and the exercise by a party of one or more of its rights or remedies shall not preclude

the exercise by it of any other rights or remedies for the same default or any other default by another party.

5. General Provisions.

5.1 No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the City and Developer. No other parties or entities are intended to be, or shall be considered, a beneficiary of the performance of any of the parties' obligations under this Agreement.

5.2 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of its terms. Reference to section numbers are to sections in this Agreement unless expressly stated otherwise.

5.3 Interpretation. The City and Developer acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and each represents and warrants to the other that it has been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides the ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to such extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the parties hereto.

5.4 Severability. Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant, and/or restriction, of this Agreement and the remainder of the Agreement shall continue in full force and effect.

5.5 Amendments to Agreement. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of the City and Developer.

5.6 Notices and Communications Between the Parties. Formal notices and communications between the parties shall be given in writing and personally served or dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the parties, as designated in this Section. Such written notices and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section. Any such notice shall be deemed to have been received (i) upon the date personal service is effected, if given by personal service, (ii) upon the expiration of one (1) business day, if emailed, or (iii) upon the expiration of three (3) business days after mailing, if given by certified mail, return receipt requested, postage prepaid.

If notice is to be made to the City:

City of Watsonville
Attn: City Clerk
275 Main Street, 4th Floor
Watsonville, CA 95076

If notice is to be made to Developer:

Landco Hillcrest, LLC
Twenty Park Road
Burlingame, CA 94010
Attn: Mark Lester

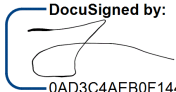
5.7 Authority. The individuals executing this Agreement on behalf of Developer and the instruments referenced on behalf of Developer represent and warrant that they have the legal power, right and actual authority to bind Developer to the terms and conditions hereof and thereof.

5.8 Counterpart Originals. This Agreement may be executed in duplicate originals, each of which is deemed to be an original.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOFF, the parties hereto have executed this Agreement for Deferral of Payment of On/Off Site Permit Fees for Stage 1 of Hillcrest Subdivision on the 26th day of March, 2022.

CITY:
CITY OF WATSONVILLE

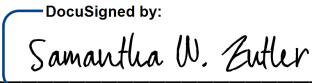
DocuSigned by:

By: _____
0AD3C4AEB0F144C...
René Mendez, City Manager

ATTEST:

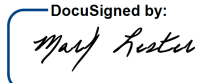
DocuSigned by:

By: _____
95928F9A882E4FA...
Irwin Ortiz
City Clerk

APPROVED AS TO FORM

DocuSigned by:

By: _____
C0E26B96468341A...
Samantha Zutler
City Attorney

DEVELOPER:
LANDCO HILLCREST, LLC

DocuSigned by:

By: _____
7C3B000939F04AB...
Name: Mark Lester
Title: Managing Member