June 28, 2011

Surplus Property Authority Commission
County Administration Building
Oakland, California 94612

Dear Commissioners:

SUBJECT: AUTHORIZATION OF LOAN AGREEMENT WITH CITY OF LIVERMORE FOR INFRASTRUCTURE IMPROVEMENTS NEEDED FOR DEVELOPMENT OF COUNTY-OWNED STAPLES RANCH PROPERTY

RECOMMENDATION:

That your Board, acting as the Commission of the Surplus Property Authority (SPA), authorize the Surplus Property Authority to enter into a Loan Agreement with the City of Livermore that provides the City with $13.4 million in “gap financing” to permit the immediate commencement of roadway and flood control infrastructure in Livermore necessary for the development of Staples Ranch.

SUMMARY/DISCUSSION:

The successful development of Staples Ranch in Pleasanton is intricately linked with the development of the retail-oriented El Charro Specific Plan (ECSP) area in Livermore, just east of El Charro Road. The completion of El Charro Road and related flood control improvements in Livermore need to be guaranteed (either by bonding or actual commencement of construction) prior to Pleasanton issuing a Final Subdivision Map for Staples Ranch, which is a requirement for the SPA to close on the $30 million first-phase sale to CLC (Continuing Life Communities) for a senior community on the Staples property (followed by an additional $15 million in subsequent phases). This is one of the last remaining issues needed for Map approval, which is tentatively scheduled for the July 19 Pleasanton City Council agenda.

Livermore wants to proceed with the ECSP infrastructure improvements, but has not been able to fully finance the estimated $39 million in costs prior to completion of the fully-approved 540,000-square foot Paragon Outlet Mall project, although a Community Facilities District (CFD) has been established within the ECSP area. Because of the SPA’s need for a specific commitment relating to the
infrastructure for Staples Ranch development, SPA and Livermore staff have negotiated a proposed loan agreement with the SPA providing a $13.4 million "gap financing" loan to Livermore, contingent on the City beginning construction this summer, with completion within 18 months. The remainder of the funds will come from Livermore-issued Certificates of Participation ($10 million); Zone 7 ($7.5 million); Livermore traffic impact funds, General Fund-related fees and grants ($5.1 million) and a $3 million payment from SPA required under a 2007 Cost-Sharing Agreement between the SPA, Livermore and Pleasanton.

Under the terms of the proposed Loan Agreement, the SPA will make a loan to Livermore of $13.4 million, contingent on Livermore receiving all necessary permits, obtaining all other necessary funding, awarding a construction contract for the ECSP infrastructure improvements, and delivering a Promissory Note to repay the loan. The loan would bear an interest rate of 2% per annum (adjusting to LIBOR plus 2% beginning at the commencement of Year Three of the loan) due and payable upon repayment of the principal. The loan must be consummated by September 15, 2011 (but is anticipated to occur in July) and Livermore would be obligated to begin construction of the infrastructure within 30 days of acceptance and complete the infrastructure within 18 months of the loan payment.

While the loan has a repayment term of 10 years ("maturity date"), the loan must be fully repaid prior to Livermore issuing the first certificate of occupancy for the Paragon project. The Paragon development is anticipated to begin construction this summer, and to open by the spring of 2013. In the unlikely event the Paragon development fails to go forward, any future development on this prime development site would similarly be required to pay off the full loan amount prior to opening, and any development within the greater ECSP area would similarly be required to pay off a proportionate share of the loan amount. The sources of Livermore’s loan repayment are: developer contributions; collateral received by developer(s); proceeds from refunding bonds issued on behalf of the CFD, and CFD special tax revenue. Livermore is not obligated to repay the loan from any other revenue source, including its General Fund.

In the highly unlikely event no development occurs within the ECSP area before the 10-year loan maturity date, Livermore must use good faith efforts to issue refunding bonds to repay the loan in full. If the market cannot support the sale of bonds at that time, the City is thereafter obligated to levy special taxes with the tax proceeds shared between the SPA and Livermore, based on the $13.4 million loan amount relative to the City’s $10 million Certificate of Participation dedicated to these improvements, until the SPA loan is paid off in full, subject to an interest rate of LIBOR plus 2%.

Livermore has now received all permits needed to proceed and, on June 27, awarded a construction contract for the Phase I infrastructure improvements, contingent on approval of the loan agreement. Paragon has formally reiterated its commitment to go forward.
with the outlet mall project once the infrastructure project commences construction (see attached letter).

In addition to the SPA’s interests regarding Staples Ranch, Livermore’s commitment to go forward (and complete) the ECSP infrastructure improvements will also result in the long-sought goal of completing a major roadway arterial between Pleasanton and Livermore parallel to I-580, once Staples Ranch is developed and Stoneridge Drive is opened.

**FINANCING:**

There will be no Net County Cost as a result of this action. The proceeds from SPA’s recent close on the AvalonBay development in Dublin (net of $13.4 million) is currently available to be used to fund the proposed loan, should it be approved by your Board.

Sincerely,

Chris Bazar, Director
Community Development Agency
June 28, 2011

Chris Bazar, Agency Director
Community Development Agency
224 W. Winton Avenue, Room 110Hayward, CA 94554

Re: Alameda County Surplus Property Authority Gap Loan (the “ACS Loan”)

Dear Mr. Bazar:

As you know, Paragon Outlets Livermore Valley LLC ("Paragon") is on the cusp of finalizing its construction loan and commencing construction of its long-awaited 545,000 square foot outlet center project (the “Project”) at the El Charro interchange in Livermore. With the issuance of the Finding of No Significant Impact (“FONSI”) by the FAA, the Project is fully entitled. All governmental permits and approvals needed to begin construction have been received, including those needed for the construction and completion of the extensive offsite improvements benefitting not only the Project, but also the planned projects across El Charro Road in Pleasanton. Furthermore, the on-site plans for both the infrastructure and the buildings have been completed, and the building permits are ready for issuance. Paragon intends to commence Project construction on or about July 15, 2011.

Closing the construction loan and meeting this schedule squarely depends on the approval of the ACS Loan at the July 12, 2011 County meeting. Timing is critical. The availability of the ACS Loan proceeds is the last hurdle to finalizing the Project capital structure and to starting the Project.

As you know, we need to hit the mid-Julv start time. The ACS Loan is pivotal to the Project and its timely commencement. Thanks to you and Alameda County Surplus Property Authority for all of your efforts.

Very truly yours,

R. Kelvin Antill
Paragon Outlet Partners
LOAN AGREEMENT

BETWEEN

SURPLUS PROPERTY AUTHORITY
OF ALAMEDA COUNTY,
a California Public Corporation
(“SPA”)

and

CITY OF LIVERMORE,
a California Municipal Corporation
(“Livermore”)

JUNE 28, 2011
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## EXHIBITS:

A – Site Plan of Property Within El Charro Specific Plan.
B – Site Plan and Description of CFD No. 2009-1 and Improvement Areas.
C – Description of Phase 1 ECSP Infrastructure Improvements.
D – Promissory Note
E – Improvement Area Loan Portion.
F - Sources and Uses for Phase 1 ECSP Infrastructure Improvements
This Loan Agreement ("Agreement") is made and entered into as of June 28, 2011 ("Effective Date") by and between SURPLUS PROPERTY AUTHORITY OF ALAMEDA COUNTY, a California public corporation ("SPA") and the City of Livermore, a California municipal corporation ("Livermore").

Pursuant to Section 2.1 of the CSA, SPA shall pay Livermore Two Million Dollars ($2,000,000) within thirty (30) days of Livermore's written notification to SPA that a contract has been awarded and a notice to proceed given for the construction of El Charro Road improvements.

Section 3.6 of the CSA specifies that SPA shall contribute fifty percent (50%) of the cost of the flood protection improvements, up to a maximum of One Million Dollars.
($1,000,000), and shall provide these funds to Livermore within thirty (30) days of Livermore’s written notification to SPA that a contract has been awarded and a notice to proceed given for the construction of the flood protection improvements.

G. As specified in Section 2.1 of the CSA, Livermore, and the City of Pleasanton by written agreement, have determined that Livermore will remain the El Charro Road “Constructing Agency,” even though El Charro Road has been annexed to the City of Pleasanton.

H. Livermore has determined that there are insufficient funding sources to complete construction of Phase 1 ECSP Infrastructure Improvements (described in the following sentence) necessary for the development of the property located in the ECSP area, and that there will be insufficient land values within the ECSP area to support issuance of bonds by Livermore for the CFD until such time as the Phase 1 ECSP Infrastructure Improvements are completed. The “Phase 1 ECSP Infrastructure Improvements” are described on Exhibit C.

I. SPA is willing to provide a loan to Livermore of Thirteen Million Four Hundred Thousand Dollars ($13,400,000.00) to permit Livermore to construct the Phase 1 ECSP Infrastructure Improvements, necessary for the development of Staples Ranch, subject to the terms and conditions of this Agreement.

J. To provide additional gap financing for the Phase 1 ECSP Infrastructure Improvements, Livermore is concurrently causing certificates of participation to be executed and delivered (the “Livermore COPs”). The Livermore COPs represent fractional interests in lease payments to be made by Livermore. The lease payments are payable from the general fund of Livermore and Livermore will reimburse the general fund for the lease payments on a parity basis with its repayment of the Loan, as described more completely in Section 4.

K. Livermore has determined that, assuming it will experience no costs in excess of the contingencies shown on Exhibit F, the loan from SPA, along with other available moneys, will be sufficient to complete construction of Phase 1 ECSP Infrastructure Improvements, and a detailed sources and uses table is attached as Exhibit F.

L. Livermore has been issued all permits and approvals necessary to construct the Phase 1 ECSP Infrastructure Improvements, with the exception of certain approvals (including, but not limited to, the Environmental Assessment and the Finding of No Significant Impact) required from the Federal Aviation Administration (“FAA Approvals”). Livermore currently anticipates receiving the FAA Approvals by June 30, 2011.

AGREEMENT

1. Loan Terms.

1.1 Amount of Loan. Subject to the terms and conditions of this Agreement, SPA agrees to loan to Livermore (the “Loan”) the sum of Thirteen Million Four Hundred Thousand Dollars ($13,400,000.00) (the “Loan Amount”). Livermore agrees that the proceeds of the Loan shall be used solely to pay the costs of constructing the Phase 1 ECSP Infrastructure Improvements.
1.2 Payment; Pledge. Livermore shall repay the Loan pursuant to the terms of this Agreement and the promissory note attached to this Agreement as Exhibit D (the “Promissory Note”). For the benefit of SPA, Livermore shall execute the Promissory Note for and on behalf of the CFD. In the circumstances described in this Agreement, Livermore will levy Special Taxes in the improvement area(s) (each, an “Improvement Area”) listed on Exhibit B, as described more completely in this Agreement, according to the applicable rate and method of apportionment of special tax (each, an “RMA”). Livermore’s obligation to make payments as set forth in this Agreement shall be secured by a first pledge of the following, subject to the provisions of Section 4: (i) revenues generated by the levy of Special Taxes in the CFD remaining after payment by Livermore of the reasonable costs of administering the CFD (“Special Tax Revenues”), (ii) cash contributions made by property owners to Livermore after the Effective Date for Phase 1 ECSP Infrastructure Improvements pursuant to development agreements with Livermore, excluding (A) cash contributions made by property owners to reimburse Livermore for pre-development costs related to ECSP and (B) $680,569 of cash contributions made to Livermore with respect to Improvement Area No. 2 for Phase 1B costs (as described in the footnote to Exhibit F) (“Developer Contributions”) and (iii) Collateral as defined in and in the circumstances described in Section 2(a)(vii).

1.3 Date of Loan. Following execution of this Agreement, and upon satisfaction of all conditions in Section 1.4, Livermore shall notify SPA in writing that Livermore agrees to accept the Loan (“Livermore’s Notice”). Subject to the terms and conditions of this Agreement, including without limitation, the conditions and requirements in Section 1.4, SPA shall deliver the Loan Amount to Livermore no later than thirty (30) days following SPA’s receipt of Livermore’s Notice. The date SPA delivers the Loan Amount to Livermore is the “Date of Loan. SPA acknowledges that (i) a breach of its obligation to deliver the Loan Amount to Livermore no later than thirty (30) days following SPA’s receipt of Livermore’s Notice will result in irreparable and continuing damage to Livermore for which there will be no adequate remedy at law, and (ii) Livermore will be entitled to specific performance of SPA’s obligation.

If the Loan has not been consummated as a result of Livermore not satisfying the conditions stated in Section 1.4 by September 15, 2011 (the “Loan Outside Closing Date”), then at any time after the Loan Outside Closing Date either Livermore or SPA shall have the election to terminate this Agreement, in which event the parties shall have no further rights and obligations under this Agreement accruing after the date of termination.

1.4 Conditions to Loan. In addition to other terms and conditions stated in this Agreement, SPA’s obligations to deliver the Loan Amount to Livermore pursuant to Section 1.3 is conditioned upon the following:

(a) Livermore’s delivery to SPA of the Promissory Note duly completed and executed by Livermore.

(b) There shall be no litigation (or threatened litigation known to Livermore) by third parties that may affect in any manner the construction of the Phase 1 ECSP Infrastructure Improvements.
(c) A contract has been awarded by Livermore for construction of the Phase 1 ECSP Infrastructure Improvements, and copies of the contract and notice to proceed have been delivered to SPA.

(d) All necessary permits and approvals for construction of the Phase 1 ECSP Infrastructure Improvements, including the FAA Approvals and encroachment permits, have been received by Livermore and copies of such permits and approvals have been delivered to SPA.

(e) Livermore has delivered to SPA copies of performance bonds for construction of the Phase 1 ECSP Infrastructure Improvements, naming Pleasanton as "additional insured."

(f) Livermore has provided evidence that is reasonably satisfactory to SPA that the sources of funds identified in Exhibit F to pay for the Phase 1 ECSP Infrastructure Improvements are available. Exhibit F identifies those sources of funds for which, as of the date of this Agreement, Livermore has satisfied this requirement.

2. Obligations of Livermore. Livermore agrees to the following obligations stated in this Section 2.

(a) Livermore shall repay principal of and accrued interest on the Loan from the following sources and on the following terms:

(i) Subject to the following provisions of this Agreement, Livermore shall be obligated to repay principal of and interest on the Loan solely from (i) the proceeds of refunding bonds issued by Livermore on behalf of the CFD with respect to one or more Improvement Areas for the purpose of repaying principal of and interest on the Loan ("CFD Refunding Bonds"), (ii) Special Tax Revenues, (iii) Developer Contributions and (iv) Collateral as defined in and in the circumstances described in Section 2(a)(vii). Livermore will have no obligation to repay principal of and interest on the Loan from any other source of funds.

(ii) Prior to the State Maturity Date (defined below) the unpaid amount of the loan will accrue interest at the rate of 2% per annum for the first two years, after which time the unpaid principal amount of the Loan will accrue interest at an annual rate equal to the six-month London Interbank Offered Rate ("LIBOR") plus 2%, beginning on the third anniversary of the Date of Loan. The interest rate will be adjusted once a year on the anniversary of the Date of Loan. In the circumstances described in Sections 5.1(b), (c) and (d), interest will accrue at the rate set forth in Section 5.2. Interest on the unpaid principal amount of the Loan shall be calculated on the basis of a 360-day year composed on 12 30-day months.

(iii) The accrued interest will be due and payable upon repayment of the principal amount of the Loan.

(iv) The stated maturity date of the Loan (the "Stated Maturity Date") will be 10 years from the Date of Loan, as defined in Section 1.3 above. The unpaid principal amount of the Loan, along with all accrued interest through the Stated Maturity Date, will be due and payable on the Stated Maturity Date. In the event that funds available to Livermore to pay
principal of and interest on the Loan on the Stated Maturity Date are not sufficient to pay the
accrued interest and outstanding principal in their entirety, amounts paid by Livermore shall be
applied first to accrued but unpaid interest and then to unpaid principal.

(v) The unpaid principal of the Loan, along with accrued interest to the
prepayment date, may be prepaid by Livermore at any time without premium or penalty. Any
prepayment shall be applied first to accrued but unpaid interest and then to unpaid principal.

(vi) Livermore will not issue an initial tenant space certificate of
occupancy for a property within Improvement Area No. 1 until it has repaid principal of and
interest on the Loan in whole. Livermore’s obligation under this Section 2(a)(vi) shall survive
repayment by Livermore of the Improvement Area Loan Portion for Improvement Area No. 1.

(vii) If, at any time after the Date of Loan, Livermore receives collateral
(“Collateral”) from the owner of property in Improvement Area No. 1 as security for the
obligation of such owner to purchase CFD Refunding Bonds issued by Livermore with respect to
Improvement Area No. 1 for the purpose of refinancing the Loan in whole (“Improvement Area
No. 1 Refunding Bonds”), then within 90 days of Livermore’s receipt of the Collateral,
Livermore will (A) issue the Improvement Area No. 1 Refunding Bonds or (B) use the Collateral
to repay principal of and interest on the Loan. Unless otherwise approved by SPA, the Collateral
shall consist of either a cash deposit or an irrevocable, evergreen letter of credit issued by a
banking institution the claims-paying ability of which is rated by a nationally-recognized rating
agency at least “A”.

(viii) If (A) Livermore has not repaid principal of and interest on the
Loan in whole on or before the 90th day preceding the Stated Maturity Date and (B) Livermore
has not received a deposit of Collateral, SPA expects Livermore to take the following steps with
the goal of issuing CFD Refunding Bonds to repay the principal of and interest on the Loan on
the Stated Maturity Date: (X) Livermore staff to recommend the issuance of CFD Refunding
Bonds to the City Council, (Y) the Livermore City Council to approve issuance of the CFD
Refunding Bonds and (Z) Livermore to use good faith efforts to sell CFD Refunding Bonds. The
CFD Refunding Bonds will be payable from Special Tax Revenues generated in each of the
Improvement Areas that has not repaid its Improvement Area Loan Portion (defined below).

(ix) Livermore will not issue an initial tenant space certificate of
occupancy for a property in any Improvement Area in the CFD other than Improvement Area
No. 1 until it has repaid the percentage of the principal of and interest on the Loan allocable to
the Improvement Area as set forth in Exhibit E (each portion is referred to in this Agreement as an
“Improvement Area Loan Portion”) to the SPA.

(x) Upon receipt of a Developer Contribution, Livermore shall:

(A) Use any Developer Contributions received from the
owners of property in Improvement Area Nos. 2, 3 4 and 5 as
follows: to repay the related Improvement Area Loan Portion, if
unpaid, in an amount equal to 57% of each Developer
Contribution, and to reimburse Livermore’s general fund for the

lease payments related to the Livermore COPs in an amount equal to 43% of each Developer Contribution. The portion of the Developer Contribution used to repay an Improvement Area Loan Portion shall be applied first to accrued but unpaid interest on the Loan and then to unpaid principal of the Loan.

(B) Use any Developer Contributions received from the owners of property in Improvement Area No. 1 to repay principal of and interest on the Loan, without limitation as to the Improvement Area No. 1 Improvement Area Loan Portion. The portion of a Developer Contribution used to repay an Improvement Area Loan Portion shall be applied first to accrued but unpaid interest on the Loan and then to unpaid principal of the Loan.

(C) Use any Developer Contributions from property owners outside the CFD as follows: (1) in an amount equal to 57% of such Developer Contributions, to repay the principal of and interest on the Loan, crediting the Improvement Area Loan Portions of the various Improvement Areas on a pro rata basis and (2) in an amount equal to 43% of such Developer Contributions, to reimburse Livermore for payment of the lease payments related to the Livermore COPs. The Developer Contribution shall be applied first to accrued but unpaid interest on the Loan and then to unpaid principal of the Loan.

(xi) From and after the Stated Maturity Date, Livermore shall levy Special Taxes in each Improvement Area that has not repaid its Improvement Area Loan Portion according to the respective RMA in an amount equal to 72% of the Maximum Special Tax (as defined in the RMAs) until such time as the principal and accrued interest on the Improvement Area’s respective Improvement Area Loan Portion has been paid. In this event, Livermore will make payments to SPA on each February 1 and August 1, concurrently with payments to reimburse the general fund for the lease payments related to the Livermore COPs and any other parity debt issued in accordance with Section 4. Any payments shall be applied first to accrued but unpaid interest and then to unpaid principal.

(b) From and after the Stated Maturity Date, on or about March 30 and June 30 of each fiscal year, Livermore’s Finance Director will compare the amount of Special Taxes levied in that fiscal year in each Improvement Area that has not repaid its Improvement Area Loan Portion to the amount of Special Tax payments theretofore received by Livermore in such Improvement Area. If the Finance Director determines that any single parcel subject to the Special Tax in such Improvement Area is delinquent in the payment of more than one installment of Special Taxes, then Livermore will send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the property owner within 45 days of such determination, and (if the delinquency remains uncured) foreclosure proceedings will be commenced by Livermore within 90 days of such determination.
(c) Livermore shall commence construction of the Phase 1 ECSP Infrastructure Improvements no later than thirty (30) days after the Date of Loan. The phrase "commence construction" means the commencement of rough grading.

(d) Livermore shall complete construction of all ECSP Phase I Infrastructure Improvements and certify the completion of construction of the flood control improvements in accordance with the FEMA CLOMR No. 08-09-1228R and El Charro Infrastructure Plans dated April 26, 2011 by no later than 18 months after the Date of Loan, unless paleontological or archeological resources are discovered during construction or as a result of the occurrences of Force Majeure that impact the overall construction schedule of the Phase 1 ECSP Infrastructure Improvements, in which case the date of completion of construction may be delayed on a day-for-day basis for the period of time that construction is delayed. If requested by SPA, Livermore shall provide a written explanation of the need for and amount of time that construction was delayed.

(e) Livermore will use reasonable care and oversight regarding construction of the Phase 1 ECSP Infrastructure Improvements for the purpose of causing the Phase 1 ECSP Infrastructure Improvements to be constructed within budget and by the date that is 18 months after the Date of Loan, unless paleontological or archeological resources are discovered during construction or as a result of the occurrences of Force Majeure that result in construction delays that impact the construction schedule of the Phase 1 ECSP Infrastructure Improvements, in which case the date of completion of construction may be delayed on a day-for-day basis for the period of time that construction is delayed. In the event the Phase 1 ECSP Infrastructure Improvements are not completed within the time set forth in the previous sentence, Livermore will promptly pursue all remedies available to it under its construction contract(s) related to the Phase 1 ECSP Infrastructure Improvements and will pay to the County any liquidated damages it receives pursuant to such construction contracts.

(f) Livermore will diligently exercise its right to collect Developer Contributions when due.

(g) In the event that the total costs of constructing the Phase 1 ECSP Infrastructure Improvements exceed the expected costs (including contingencies) as shown on Exhibit F, Livermore and SPA will meet and confer to discuss the options for completing the Phase 1 ECSP Infrastructure Improvements.

(h) Livermore will, to the extent reasonably possible, use the other sources of money listed on Exhibit F to pay the costs of constructing the Phase 1 ECSP Infrastructure Improvements before using the proceeds of the Loan for that purpose.

(i) Upon completion of construction of the Phase 1 ECSP Infrastructure Improvements, Livermore will use any of the funds listed on Exhibit F that are not required to pay such costs to prepay principal of and accrued interest on the Loan. Any such funds shall be applied first to accrued but unpaid interest on the Loan and then to unpaid principal of the Loan.

If this Agreement terminates pursuant to Section 1.3, Livermore’s obligations pursuant to this Section 2 shall cease.
3. **Modification of SPA’s Obligation Under CSA.** As a condition to SPA executing this Agreement and providing the Loan Amount to Livermore, Livermore agrees that SPA may, at its election, defer the payment of up to Three Million Dollars ($3,000,000) due Livermore under Sections 2.1 and 3.6 of the CSA until no later than April 15, 2012. If SPA elects to defer payment of all or a portion of the up to Three Million Dollars ($3,000,000), SPA will pay Livermore two percent (2%) simple annual interest on the deferred amount, calculated from the Date of Loan until the amount is paid to Livermore. Livermore agrees that this provision is a waiver of SPA’s obligations under Sections 2.1 and 3.6 of the CSA pursuant to Section 16 of the CSA unless Livermore elects not to accept the Loan Amount from SPA by the Loan Outside Closing Date, in which case SPA’s payment obligations pursuant to Section 2.1 and 3.2 of the CSA shall apply.

4. **Additional Debt.** Livermore will not encumber, pledge or place any charge or lien upon the Developer Contributions that is superior to or on a parity with the pledge of the Developer Contributions set forth in Section 1.2, but shall use the Developer Contributions as described in Section 2(a)(x).

With respect to any Improvement Area that has not repaid its Improvement Area Loan Portion, Livermore will not encumber, pledge or place any charge or lien upon the Special Tax Revenues that is superior to or on a parity with the pledge of the Special Tax Revenues set forth in Section 1.2, except as set forth in the remainder of this Section 4. In addition to the Loan, Livermore may:

(a) Without the consent of SPA, issue CFD Refunding Bonds that are payable from Special Tax Revenues on a parity basis to the Loan. Interest on such CFD Refunding Bonds shall be payable on each February 1 and August 1, and principal shall be payable on each August 1.

(b) With the prior written consent of SPA, issue bonds or incur other contractual obligations payable from Special Tax Revenues on a parity or superior basis to the Loan for the purpose of financing improvements that are authorized to be financed by the CFD ("CFD authorized improvements"). Interest on any such parity obligations will payable on each February 1 and August 1 and principal will be payable on each August 1.

This section does not limit the issuance of additional debt by Livermore with respect to an Improvement Area if the Improvement Area Loan Portion has been repaid.

SPA acknowledges that, in addition to the Loan and any additional debt authorized by this Section 4, Livermore is concurrently causing the Livermore COPs to be executed and delivered to finance the Phase 1 ECSP Improvements. The lease payments related to the Livermore COPs are payable from the general fund of Livermore, and Livermore will reimburse the general fund for the lease payments from Special Tax Revenues on a parity basis with its obligations under this Agreement, with each Improvement Area obligated to reimburse the general fund for the same percentage of lease payments as its Improvement Area Loan Portion. Livermore will reimburse the interest component of the lease payments on each February 1 and August 1, and will reimburse the principal component of the lease payments on each August 1.
Payments of principal of and interest on the Loan, reimbursement of the Livermore general fund for the lease payments related to the Livermore COPs and payments on any other parity obligation shall be payable from Special Tax Revenues on a pro rata basis based on the initial principal amount of each obligation.

5. Events of Default and Remedies

5.1 Events of Default. The following are “Events of Default” under this Agreement:

(a) A failure by Livermore to pay principal of and accrued interest on the Loan on the Stated Maturity Date pursuant to Section 2(a)(iv); and

(b) Any failure by Livermore to observe and perform any covenant or agreement on its part to be observed or performed under Sections 2(a)(vi), 2(a)(vii), 2(a)(ix), 2(a)(x), 2(a)(xi), 2(b), 2(c), 2(d), 2(e), 2(f), 2(h) and 2(i) for a period of thirty (30) days after written notice specifying such breach or failure and requesting that it be remedied, is given to Livermore by SPA; provided, however, that in the event a breach or failure cannot be corrected within a 30-day period, such breach or failure shall not constitute an Event of Default if corrective action is instituted by Livermore within the 30-day period and is diligently pursued to completion thereafter.

(c) With respect to the actions listed in clauses (X) and (Y) of Section 2(a)(viii), any failure by Livermore to undertake one or more of the actions for a period of thirty (30) days after written notice specifying such breach or failure and requesting that it be remedied, is given to Livermore by SPA; provided, however, that in the event a breach or failure cannot be corrected within a 30-day period, such breach or failure shall not constitute an Event of Default if corrective action is instituted by Livermore within the 30-day period and is diligently pursued to completion thereafter.

(d) Any failure by Livermore to issue CFD Refunding Bonds in the circumstances described in Section 2(a)(viii) for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied, is given to Livermore by SPA; provided, however, that in the event such failure cannot be corrected within a 30-day period, such failure shall not constitute an Event of Default if corrective action is instituted by Livermore within the 30-day period and is diligently pursued to completion thereafter.

5.2 Remedies on Default.

(a) In the event of an Event of Default listed in Section 5.1(a), then from and after the Stated Maturity Date, the unpaid principal amount of the Loan will accrue interest at an annual rate equal to the six-month London Interbank Offered Rate (“LIBOR”) as of the Stated Maturity Date plus 2%, subject to a maximum of 12%.

(b) In the event of an Event of Default listed in Section 5.1(b) as a result of a failure by Livermore to observe and perform any covenant or agreement on its part to be observed or performed under Sections 2(a)(vi), 2(a)(vii), 2(a)(ix) or 2(a)(xi), the unpaid principal amount of the Loan will, for as long as the Event of Default has not been remedied,
accrue interest at an annual rate equal to the sum of (i) the otherwise applicable interest rate and (ii) 8%, subject to a maximum of 12%.

(c) In the event of an Event of Default listed in Section 5.1(b) as a result of a failure by Livermore to observe and perform any covenant or agreement on its part to be observed or performed under Sections 2(a)(x), 2(b), 2(c), 2(d), 2(e), 2(f), 2(h) and 2(i), Livermore acknowledges that (i) a breach of such provisions will result in irreparable and continuing damage to SPA for which there will be no adequate remedy at law, and (ii) SPA will be entitled to specific performance of Livermore’s obligations under such provisions.

(d) In the event of an Event of Default listed in Section 5.1(c), then from and after the Stated Maturity Date and for as long as the Event of Default has not been remedied, the unpaid principal amount of the Loan will accrue interest at an annual rate equal to the sum of (i) the otherwise applicable interest rate and (ii) 8%, subject to a maximum of 12%.

(e) In the event of an Event of Default listed in Section 5.1(d), then from and after the Stated Maturity Date, the unpaid principal amount of the Loan will accrue interest at an annual rate equal to LIBOR as of the Stated Maturity Date plus 2%, subject to a maximum of 12%.

5.3 No Remedy Exclusive. No remedy conferred in this Agreement is intended to be exclusive of any remedy or remedies existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power or will be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

5.4 Remedies Subject to Applicable Law. All rights, remedies, and powers provided to SPA may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law.


6.1 Entire Agreement. This Agreement, including all recitals and exhibits, and the CSA (as modified by this Agreement) constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and the CSA and supersedes any and all prior or contemporaneous understandings, negotiations, representations, promises and agreements, oral or written, by or between the parties, with respect to the subject matter of this Agreement and the CSA. No representations, inducements, promises, or agreements have been made in connection with this Agreement by any party, or anyone acting on behalf of any party, other than those expressly set forth in this Agreement.

6.2 Amendment. This Agreement may be amended, modified or supplemented only by a writing signed by both parties.

6.3 Waiver. No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this
Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver unless the written waiver so specifies.

6.4 Counterparts; Facsimile/Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. The parties shall be entitled to rely upon facsimile copies or electronic copies of the parties’ signatures to this Agreement and any instrument executed in connection herewith. Notwithstanding the foregoing, promptly after sending a facsimile or electronic copy of its signature hereon, each party shall provide the other with an executed original counterpart by overnight courier, although the failure to provide such counterpart shall not affect the effectiveness of this Agreement.

6.5 Governing Law. This Agreement is entered into in and shall be governed by and construed in accordance with the internal laws of the State of California.

6.6 Jurisdiction and Venue. The parties agree that any suit, action or proceeding arising out of or relating to this Agreement, or the interpretation, performance or breach of this Agreement, shall be instituted in the United States District Court for Northern District of California, or any court of the State of California located in Alameda County, California.

6.7 Severability. If any term or provision of this Agreement is ever determined to be invalid or unenforceable for any reason, such term or provision shall be severed from this Agreement without affecting the validity or enforceability of the remainder of this Agreement.

6.8 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed duly given: (a) when delivered if personally delivered to the recipient; (b) when transmitted by telecopier or facsimile device during normal business hours, provided such device is capable of generating a written confirmation of such transmission and receipt and an original is deposited in first class mail within two (2) business days thereafter addressed as set forth in this Section; (c) on the first business day following delivery to an overnight delivery service, provided delivery is confirmed by the delivery service; and (d) on the earlier of actual receipt or three (3) days following deposit in United States certified mail, postage prepaid and return receipt requested, addressed to the parties as set forth in this Section. Any party may change its address for notices by giving written notice to the other parties in the manner set forth above.

To Livermore: City of Livermore 1052 S. Livermore Avenue Livermore, CA 94550 Attn: City Engineer and City Attorney

To SPA: Surplus Property Authority of Alameda County 224 West Winton Avenue, Room 110 Hayward, California 94544 Attn: Director and Manager
6.9 **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns, notwithstanding any contrary provision in any ordinance, resolution, law, rule, regulation or other agreement of Livermore or SPA in effect as of the Effective Date of this Agreement or at any time thereafter; provided, SPA is not obligated to make the loan pursuant to this Agreement to any person or entity other than Livermore.

6.10 **No Third Party Beneficiary.** This Agreement is made solely for the benefit of the parties and their respective successors and assigns, and no person or entity shall have or acquire any rights or remedies under this Agreement except as otherwise expressly provided in this Agreement.

Executed on the Effective Date.

THE CITY OF LIVERMORE, a California municipal corporation

By: [Signature]
Name: Linda Kaukon
Its: City Manager
Date: 6-23-2021
Attest: [Signature]
City Clerk

Approved as to form by: [Signature]
Name: Sean Alcal
Attorney for the City of Livermore

SURPLUS PROPERTY AUTHORITY OF ALAMEDA COUNTY, a California public corporation

By: [Signature]
Name: Chris Rees
Title: Manager

Approved as form by: [Signature]
County Counsel
PROPOSED BOUNDARIES OF
COMMUNITY FACILITIES DISTRICT NO. 2009-1 (EL CHARRO)
CITY OF LIVERMORE
COUNTY OF ALAMEDA, STATE OF CALIFORNIA.

INTERSTATE-580

COLOR LEGEND:

- IMPROVEMENT AREA 1
- IMPROVEMENT AREA 2
- IMPROVEMENT AREA 3
- IMPROVEMENT AREA 4
- IMPROVEMENT AREA 5

ASSESSOR PARCEL NUMBERS

1  904-0001-003-15
2  904-0001-008-18
3  904-0001-008-06
4  904-0001-008-27
5  904-0001-011-01
6  904-0001-011-16
7  904-0001-005-06
8  904-0001-009-12
9  904-0001-009-31

LEGEND:

- CF NO. 2009-1 BOUNDARIES (EL CHARRO)
- PARCEL PROPERTY LINE
- REFERENCE NUMBER FOR PARCELS

EXHIBIT B
1. **Public Improvements.** The total public improvements are estimated to have a cost in excess of $62,000,000 and may be constructed in phases as properties within the Plan Area are developed. Phase I includes the backbone infrastructure, roads and flood control, necessary for all development in the ECSP and Staples Ranch area. The Phase I Public Improvements are more specifically described as follows:

A. **Roadway Improvements.**

   (1) **Jack London Boulevard:** Pursuant to the design identified in the ECSP, Jack London Boulevard shall be constructed between El Charro Road and Road A including street lighting, median landscaping and other roadway appurtenances. A traffic signal shall be installed at the intersection of Jack London Boulevard and Road A. The initial roadway shall be built between El Charro Road and Road A prior to abandonment of Freisman Road Access.

   A two-lane roadway facility will also be required between Road A and existing Jack London Boulevard terminus approximately 1,100 feet west of Kitty Hawk Road/Isabel Avenue. The portions of the bridge (foundations, abutments, etc.) affecting the creek corridor at Arroyo Las Positas shall be built pursuant to final design plans. Modifications to the City’s Las Positas Municipal Golf Course shall be constructed and completed by City prior to Jack London Boulevard construction through the Golf Course.

   (2) **El Charro Road:** El Charro Road shall be widened from 1-580 to the intersection of the new alignment of Jack London Boulevard and includes necessary transition south of Jack London Boulevard, installation of a joint utility trench along the frontage of the Property, street lighting, median landscaping, and other roadway appurtenances. A traffic signal shall be installed at the intersection of El Charro Road and Jack London Boulevard. The widening of El Charro Road shall be coordinated with Zone 7 and City to accommodate Zone 7’s proposed construction of a water line in El Charro Road. The roadway shall be widened pursuant to final design plans and specifications approved by City consistent with the ECSP.

   (3) **Road A:** Freisman Road shall be realigned and designated as Road A and centered between Developer’s Property and the adjacent parcel currently owned by Roger Johnson, including street lighting, median landscaping, other roadway appurtenances, and a new intersection with Jack London Boulevard and consistent with the approved ECSP. A traffic signal shall be installed at the intersection of Jack London Boulevard and Road A. At all times during construction of the Freisman Road realignment, reasonable access shall remain open for vehicles to the existing properties currently served by Freisman Road.
EI Charro Road/I-580 Interchange Improvements: City shall construct or cause to be constructed eastbound on-ramp modifications and roadway appurtenances at the EI Charro Road/I-580 Interchange in coordination with or soon after completion of the City of Dublin Fallon Road/I-580 Interchange project.

B. Trail Improvements.

The Phase I Public Improvements shall include a paved trail adjacent to the Jack London Boulevard extension and/or south and north of the Arroyo Las Positas connecting the existing trail along the existing section of Jack London Boulevard to an existing trail on the west side of EI Charro Road. These trail improvements include construction of a pedestrian bridge over the Arroyo Las Positas.

C. Other Infrastructure.

(1) Joint Trench for Utilities: A joint trench shall be constructed for telecommunications, electrical and gas utilities to serve the Plan Area and shall be sized to adequately serve the entire aggregate of development anticipated in the entire Plan Area. As part of the Phase IA Public Improvements, the joint trench will extend along the ECSP frontage on EI Charro Road, and along Jack London Boulevard from EI Charro Road to approximately 200’ east of Road A. The joint trench shall extend along a portion of Road A to the City property line, with only gas extending along Road A and Freisman Road.

(2) Electric Service: City shall work with Pleasanton, Dublin and other private and public utility companies to obtain approvals for electrical service to be extended along EI Charro Road from Stanley Boulevard to the ECSP frontage, along Jack London Boulevard to approximately 200’ east of Road A, and along a portion of Road A to the City property line.

(3) Emergency Vehicle Access: In the event that the Jack London Boulevard extension between Road A and the existing terminus approximately 1,100 feet west of Kitty Hawk Road/Isabel Avenue is not anticipated to be completed within six (6) months after to Developer’s occupancy of the property, then an alternate Emergency Vehicle Access (EVA) shall be constructed prior to occupancy, subject to final design approval by the City.

(4) Storm Water and Flood Control Improvements: The construction of storm water and flood control improvements as defined in the ECSP and as more fully refined in the final design plans which serve the ECSP and Staples Ranch area.

EXHIBIT C
(5) **Water Quality Improvements:** On-site storm water quality control that treats fifty percent (50%) of the storm water runoff from the Project shall be constructed. Off-site storm water quality improvements to handle the fifty percent (50%) treatment requirements for the Project (i.e., HMP Basin 1) shall be constructed as designated in the ECSP. Phase I Public Improvements also includes mass grading and hydroteeing of HMP Basin 2 & 3 areas.

(6) **Sewer Improvements:** A sanitary sewer force main, gravity sewer mains, and sewer pump station to serve the ECSP area shall be constructed.

(7) **Recycled Water:** Recycled water pipes across the golf course and along Jack London Boulevard from El Charro Road to Road A with appropriate stubs for future interconnection shall be provided.

(8) **Potable Water System:** Potable water shall be extended from the Golf Course and along Freisman Road and a portion of Road A to the Project, and a looped system shall be constructed by the Developer on the Project site prior to Project occupancy. Additional potable water lines shall be constructed along Jack London Boulevard to the existing water line at the Golf Course snack shack, and adjacent to Road A to the sewer pump station.

(9) **Environmental Mitigations:** The creek mitigation planting plan and monitoring shall be implemented in accordance with the Mitigation and Monitoring Plan for the ECSP.
EXHIBIT D
Promissory Note

$13,400,000.00

Oakland, California

(1) , 2011

FOR VALUE RECEIVED, the undersigned, City of Livermore, a California municipal
corporation ("Payor"), for and on behalf of the City of Livermore Community Facilities District
No. 2009-1 (El Charro) with respect to its Improvement Areas, promises to pay to the order of
Surplus Property Authority of Alameda County, a California public corporation ("Payee"), at the
times and in the manner set forth in this Promissory Note, the principal sum of Thirteen Million
Four Hundred Thousand Dollars ($13,400,000.00). This Promissory Note is referred to as the
"Note." Capitalized terms used in this Note but not defined have the meaning given them in the
Loan Agreement dated June 28, 2011 between Payor and Payee (the "Loan Agreement").

1. Repayment of Note.

(a) Repayment of Note. Payor shall repay the principal sum of this Note,
together with all accrued and unpaid interest to the date of such principal payment pursuant to
the provisions of Section 2 of the Loan Agreement, a copy of such Section is attached to this
Note as Schedule 1.

The accrued interest will be due and payable by Payor upon repayment of the principal
amount of this Note.

(b) Interest Rate. The unpaid principal amount of the Loan will accrue
interest at the rate set forth in Section 2 of the Loan Agreement.

(c) Place of Payment. All payments under this Note shall be made to Payee
at the address stated in Section 2(b), or at such other place as Payee or other holder of this Note
may otherwise from time to time designate in writing.

(d) Computation of Interest and Fees. All computations of interest shall be
calculated on the basis of a year consisting of three hundred sixty (360) days composed of 12 30-
day months.

(e) Voluntary Prepayments. Payor shall have the right to prepay at any time
all of any portion of the principal amount of the indebtedness evidenced by this Note without
premium or penalty, along with any accrued interest to the prepayment date.

(f) Holidays. If any payment to be made by Payor would otherwise become
due on a day other than a Business Day, such payment shall be due on the next succeeding
Business Day. A "Business Day" means each day except Saturdays, Sundays, or any holiday for which banks in Alameda County are closed.

(g) Source of Repayment On or Before the Maturity Date. The Loan will be payable by Payor on or before the Maturity Date in the circumstances and from the sources described in Schedule 1.

(h) Partial Payments. In the event that any payment by Payor to Payee is not sufficient to pay the accrued interest and outstanding principal in their entirety, amounts paid by Payor shall be applied by Payee first to accrued but unpaid interest and then to unpaid principal.

2. Miscellaneous.

(a) Additional Debt. Payor may incur additional debt payable from the revenues pledged by Payor under the Loan Agreement as set forth in Section 4 of the Loan Agreement.

(b) Successors and Assigns. This Note shall be binding on Payor, and shall inure to the benefit of Payee, in each case, together with their respective successors and permitted assigns.

(c) Notices. All notices and other communications under this Note shall be in writing and shall be deemed duly given: (a) when delivered if personally delivered to the recipient; (b) when transmitted by telex or facsimile during normal business hours, provided such device is capable of generating a written confirmation of such transmission and receipt and an original is deposited in first class mail within two (2) business days thereafter addressed as set forth in this Section; (c) on the first business day following delivery to an overnight delivery service, provided delivery is confirmed by the delivery service; and (d) on the earlier of actual receipt or three (3) days following deposit in United States certified mail, postage prepaid and return receipt requested, addressed to the parties as set forth in this Section. Payor or Payee may change its address for notices by giving written notice to the other parties in the manner set forth in this Section.

Payee: Surplus Property Authority of Alameda County 224 West Winton Avenue, Room 110 Hayward, California 94544 Attn: Director and Manager

With an additional copy to: Wendel, Rosen, Black & Dean, LLP 1111 Broadway, Suite 2400 Oakland, California 94607 Attn: Michael A. Dean
Payor: City of Livermore
1052 S. Livermore Avenue
Livermore, California 94550
Attention: City Manager and City Attorney

(d) Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of California.

(e) Repayment. Upon the timely repayment by Payor of all principal, interest and other sums and charges due and payable under this Note, the holder of this Note shall return the original of this Note to Payor marked “Canceled”, and shall execute, acknowledge and deliver to Payor any instruments as are reasonably necessary in order to evidence such repayment and satisfaction in full of the Payor’s obligations under this Note.

EXECUTED on the above stated date.

PAYOR:

CITY OF LIVERMORE,
a California municipal corporation, for and on behalf of City of Livermore Community Facilities District No. 2009-1 (El Charro) with respect to its Improvement Areas

By: ____________________________
Name: ___________________________
Title: ____________________________
**Schedule 1**

**Obligations of Livermore.** Livermore agrees to the following obligations stated in this Section 2.

(a) Livermore shall repay principal of and accrued interest on the Loan from the following sources and on the following terms:

(i) Subject to the following provisions of this Agreement, Livermore shall be obligated to repay principal of and interest on the Loan solely from (i) the proceeds of refunding bonds issued by Livermore on behalf of the CFD with respect to one or more Improvement Areas for the purpose of repaying principal of and interest on the Loan ("CFD Refunding Bonds"), (ii) Special Tax Revenues, (iii) Developer Contributions and (iv) Collateral as defined in and in the circumstances described in Section 2(a)(vii). Livermore will have no obligation to repay principal of and interest on the Loan from any other source of funds.

(ii) Prior to the Stated Maturity Date (defined below), the unpaid principal amount of the Loan will accrue interest at the rate of 2% per annum. Beginning on the Stated Maturity Date, interest will thereafter accrue at the rate set forth in Section 5.2. In the circumstances described in Sections 5.1(b) (c) and (d), interest will accrue at the rate set forth in Section 5.2. Interest on the unpaid principal amount of the Loan shall be calculated on the basis of a 360-day year composed of 12 30-day months.

(iii) The accrued interest will be due and payable upon repayment of the principal amount of the Loan.

(iv) The stated maturity date of the Loan (the "Stated Maturity Date") will be 10 years from the Date of Loan, as defined in Section 1.3 above. The unpaid principal amount of the Loan, along with all accrued interest through the Stated Maturity Date, will be due and payable on the Stated Maturity Date. In the event that funds available to Livermore to pay principal of and interest on the Loan on the Stated Maturity Date are not sufficient to pay the accrued interest and outstanding principal in their entirety, amounts paid by Livermore shall be applied first to accrued but unpaid interest and then to unpaid principal.

(v) The unpaid principal of the Loan, along with accrued interest to the prepayment date, may be prepaid by Livermore at any time without premium or penalty. Any prepayment shall be applied first to accrued but unpaid interest and then to unpaid principal.

(vi) Livermore will not issue an initial tenant space certificate of occupancy for a property within Improvement Area No. 1 until it has repaid principal of and interest on the Loan in whole. Livermore’s obligation under this Section 2(a)(vi) shall survive repayment by Livermore of the Improvement Area Loan Portion for Improvement Area No. 1.

(vii) If, at any time after the Date of Loan, Livermore receives collateral ("Collateral") from the owner of property in Improvement Area No. 1 as security for the obligation of such owner to purchase CFD Refunding Bonds issued by Livermore with respect to
Improvement Area No. 1 for the purpose of refinancing the Loan in whole ("Improvement Area No. 1 Refunding Bonds"), then within 90 days of Livermore’s receipt of the Collateral, Livermore will (A) issue the Improvement Area No. 1 Refunding Bonds or (B) use the Collateral to repay principal of and interest on the Loan. Unless otherwise approved by SPA, the Collateral shall consist of either a cash deposit or an irrevocable, evergreen letter of credit issued by a banking institution the claims-paying ability of which is rated by a nationally-recognized rating agency at least "A".

(viii) If (A) Livermore has not repaid principal of and interest on the Loan in whole on or before the 90th day preceding the Stated Maturity Date and (B) Livermore has not received a deposit of Collateral, SPA expects Livermore to take the following steps with the goal of issuing CFD Refunding Bonds to repay the principal of and interest on the Loan on the Stated Maturity Date: (X) Livermore staff to recommend the issuance of CFD Refunding Bonds to the City Council, (Y) the Livermore City Council to approve issuance of the CFD Refunding Bonds and (Z) Livermore to use good faith efforts to sell CFD Refunding Bonds. The CFD Refunding Bonds will be payable from Special Tax Revenues generated in each of the Improvement Areas that has not repaid its Improvement Area Loan Portion (defined below).

(ix) Livermore will not issue an initial tenant space certificate of occupancy for a property in any Improvement Area in the CFD other than Improvement Area No. 1 until it has repaid the percentage of the principal of and interest on the Loan allocable to the Improvement Area as set forth in Exhibit E (each portion is referred to in this Agreement as an “Improvement Area Loan Portion”) to the SPA.

(x) Upon receipt of a Developer Contribution, Livermore shall:

(A) Use any Developer Contributions received from the owners of property in Improvement Area Nos. 2, 3 4 and 5 as follows: to repay the related Improvement Area Loan Portion, if unpaid, in an amount equal to 57% of each Developer Contribution, and to reimburse Livermore’s general fund for the lease payments related to the Livermore COPs in an amount equal to 43% of each Developer Contribution. The portion of the Developer Contribution used to repay an Improvement Area Loan Portion shall be applied first to accrued but unpaid interest on the Loan and then to unpaid principal of the Loan.

(B) Use any Developer Contributions received from the owners of property in Improvement Area No. 1 to repay principal of and interest on the Loan, without limitation as to the Improvement Area No. 1 Improvement Area Loan Portion. The portion of a Developer Contribution used to repay an Improvement Area Loan Portion shall be applied first to accrued but unpaid interest on the Loan and then to unpaid principal of the Loan.

(C) Use any Developer Contributions from property owners outside the CFD as follows: (1) in an amount equal to
57% of such Developer Contributions, to repay the principal of
and interest on the Loan, crediting the Improvement Area Loan
Portions of the various Improvement Areas on a pro rata basis and
(2) in an amount equal to 43% of such Developer Contributions, to
reimburse Livermore for payment of the lease payments related to
the Livermore COPs. The Developer Contribution shall be applied
first to accrued but unpaid interest on the Loan and then to unpaid
principal of the Loan.

(xi) From and after the Stated Maturity Date, Livermore shall levy Special
Taxes in each Improvement Area that has not repaid its Improvement Area Loan Portion
according to the respective RMA in an amount equal to 72% of the Maximum Special Tax (as
defined in the RMAs) until such time as the principal and accrued interest on the Improvement
Area’s respective Improvement Area Loan Portion has been paid. In this event, Livermore will
make payments to SPA on each February 1 and August 1, concurrently with payments to
reimburse the general fund for the lease payments related to the Livermore COPs and any other
parity debt issued in accordance with Section 4. Any payments shall be applied first to accrued
but unpaid interest and then to unpaid principal.

(b) From and after the Stated Maturity Date, on or about March 30 and June
30 of each fiscal year, Livermore’s Finance Director will compare the amount of Special Taxes
levied in that fiscal year in each Improvement Area that has not repaid its Improvement Area
Loan Portion to the amount of Special Tax payments theretofore received by Livermore in such
Improvement Area. If the Finance Director determines that any single parcel subject to the
Special Tax in such Improvement Area is delinquent in the payment of more than one
installment of Special Taxes, then Livermore will send or cause to be sent a notice of
delinquency (and a demand for immediate payment thereof) to the property owner within 45
days of such determination, and (if the delinquency remains uncured) foreclosure proceedings
will be commenced by Livermore within 90 days of such determination.

(c) Livermore shall commence construction of the Phase 1 ECSP
Infrastructure Improvements no later than thirty (30) days after the Date of Loan. The phrase
“commence construction” means the commencement of rough grading.

(d) Livermore shall complete construction of all ECSP Phase I Infrastructure
Improvements and certify the completion of construction of the flood control improvements in
accordance with the FEMA CLOMR No. 08-09-1228R and El Charro Infrastructure Plans dated
April 26, 2011 by no later than 18 months after the Date of Loan, unless paleontological or
archeological resources are discovered during construction or as a result of the occurrences of
Force Majeure that impact the overall construction schedule of the Phase 1 ECSP Infrastructure
Improvements, in which case the date of completion of construction may be delayed on a day-
for-day basis for the period of time that construction is delayed. If requested by SPA,
Livermore shall provide a written explanation of the need for and amount of time that
construction was delayed.

(e) Livermore will use reasonable care and oversight regarding construction
of the Phase 1 ECSP Infrastructure Improvements for the purpose of causing the Phase 1 ECSP
Infrastructure Improvements to be constructed within budget and by the date that is 18 months after the Date of Loan, unless paleontological or archeological resources are discovered during construction or as a result of the occurrences of Force Majeure that result in construction delays that impact the construction schedule of the Phase 1 ECSP Infrastructure Improvements, in which case the date of completion of construction may be delayed on a day-for-day basis for the period of time that construction is delayed. In the event the Phase 1 ECSP Infrastructure Improvements are not completed within the time set forth in the previous sentence, Livermore will promptly pursue all remedies available to it under its construction contract(s) related to the Phase 1 ECSP Infrastructure Improvements and will pay to the County any liquidated damages it receives pursuant to such construction contracts.

(f) Livermore will diligently exercise its right to collect Developer Contributions when due.

(g) In the event that the total costs of constructing the Phase 1 ECSP Infrastructure Improvements exceed the expected costs (including contingencies) as shown on Exhibit F, Livermore and SPA will meet and confer to discuss the options for completing the Phase 1 ECSP Infrastructure Improvements.

(h) Livermore will, to the extent reasonably possible, use the other sources of money listed on Exhibit F to pay the costs of constructing the Phase 1 ECSP Infrastructure Improvements before using the proceeds of the Loan for that purpose.

(i) Upon completion of construction of the Phase 1 ECSP Infrastructure Improvements, Livermore will use any of the funds listed on Exhibit F that are not required to pay such costs to prepay principal of and accrued interest on the Loan. Any such funds shall be applied first to accrued but unpaid interest on the Loan and then to unpaid principal of the Loan.

If this Agreement terminates pursuant to Section 1.3, Livermore’s obligations pursuant to this Section 2 shall cease.
## EXHIBIT E

### Improvement Area Loan Portion

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## EXHIBIT F

Sources and Uses for Phase 1 ECSP Infrastructure Improvements

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<tr>
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<tr>
<td>Design Services During Construction</td>
<td>$514,000</td>
</tr>
<tr>
<td>Environmental Monitoring/Surveys</td>
<td>$200,000</td>
</tr>
<tr>
<td>Testing and Special Inspection</td>
<td>$850,000</td>
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<tr>
<td>SPA Portion Design Services</td>
<td>$750,000</td>
</tr>
<tr>
<td>Environmental Mit (land, endow, &amp; pond credits)</td>
<td>$2,400,000</td>
</tr>
<tr>
<td>El Charro Interchange</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Utility Agreements (PG&amp;E)</td>
<td>$500,000</td>
</tr>
<tr>
<td><strong>Estimated Total Uses</strong></td>
<td><strong>$39,033,500</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SOURCES</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ACSPA Loan*</td>
<td>$13,400,000</td>
</tr>
<tr>
<td>City COP (net)</td>
<td>$10,000,000</td>
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<tr>
<td>City TIF Contribution</td>
<td>$554,761</td>
</tr>
<tr>
<td>City Water User Fee</td>
<td>$398,650</td>
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<tr>
<td>City Trail Grant Contribution</td>
<td>$535,714</td>
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<tr>
<td>Alameda County Surplus *</td>
<td>$3,000,000</td>
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<tr>
<td>Zone 7 Contribution</td>
<td>$7,500,000</td>
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<tr>
<td>City General Fund</td>
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<tr>
<td>Caltrans Mitigation</td>
<td>$692,000</td>
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<tr>
<td>Church Contribution</td>
<td>$552,375</td>
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<tr>
<td><strong>Estimated Total Sources</strong></td>
<td><strong>$39,033,500</strong></td>
</tr>
</tbody>
</table>

Notes: Contributions, except SPA and Golf Course, reduced by required share toward environmental, permitting and design. Total Church contribution including permits and design is $680,569 and is not pledged to Loan repayment.

* Livermore has provided satisfactory evidence of the availability of this source of funds. [to be completed prior to execution]