

San Francisco Bay Conservation and Development Commission

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State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

June 5, 2020

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Marc Zeppetello, Chief Counsel (415/352-3655; marc.zeppetello@bcdc.ca.gov)

SUBJECT: Staff Report on Proposed Agreement Terminating Third Amended Third Supplementary Agreement, Harbor Bay Isle Shoreline Park, Harbor Bay Business Park-Phase III, Alameda

(For Commission consideration on June 18, 2020)

Staff Recommendation Summary

Staff recommends that the Commission approve a proposed agreement (attached to this staff report as Exhibit A) that would terminate an existing agreement between the Commission and Harbor Bay Isle Associates (“HBIA”), which is one of several agreements entered into by the Commission and HBIA that resolved a dispute dating from the 1970s regarding the Commission’s permitting jurisdiction at Harbor Bay Isle (“HBI”) in Alameda. Termination of the existing agreement is warranted for a number of reasons, as more fully discussed below, including: (1) the existing agreement is no longer necessary now that development of HBI has been substantially completed and the owner of the last remaining developable parcel along the Bay shoreline, Ram Hotels, has agreed to apply to the Commission at a future date for a permit for its proposed hotel development project (assuming it first obtains the necessary approval from the City of Alameda); (2) the existing agreement has inadvertently put BCDC, rather than the City, in the position of designating the appropriate land use for the parcel owned by Ram Hotels; and (3) terminating the existing agreement provides the opportunity confirm that all future development or redevelopment of any areas formerly subject to the existing agreement that are within an area of BCDC jurisdiction shall be subject to BCDC permitting requirements.

Staff Report

Background

In the 1970s, BCDC and HBIA, the principal owner of land located in an area known as Bay Farm Island in the City of Alameda, disagreed over whether HBIA’s development plans for Bay Farm Island were or were not subject to BCDC’s permit jurisdiction under the legal doctrine of vested rights, because the Bay fill activities that created HBI were underway before BCDC came into existence in 1965. Rather than precipitate a lengthy and costly judicial proceeding to resolve this dispute, BCDC and HBIA voluntarily entered into a series of settlement agreements. The essence of these agreements is that BCDC waived the permit jurisdiction it believed it had the authority to exercise over the development of Bay Farm Island in exchange for an agreement by HBIA to construct public access improvements and amenities along the shoreline of Bay Farm Island and otherwise conform to development standards specified in the agreements.

Most of Bay Farm Island was developed residentially, but one area, referred to as Tract 4500, was proposed to be developed with commercial structures and became known as the Harbor

Bay Business Park. In September 1984, BCDC and HBIA entered into the Third Supplementary Agreement, Harbor Bay Isle Shoreline Park, Harbor Bay Business Park – Phase III, Alameda, California (“Third Supplementary Agreement” or “TSA”). The TSA sets forth agreements and plans for construction of a shoreline park and public access improvements along the Bay edge of the portion of HBI planned to be developed as the Harbor Bay Business Park. BCDC and HBIA subsequently amended the Third Supplementary Agreement three times; the most recent amendment occurred in March 2013. Attached to this staff report as Exhibit B is a figure showing the location Harbor Bay Business Park.

The Commission has considered two projects along the Bay shoreline in the Harbor Bay Business Park in the past few years. Most recently, in February 2019, the Commission concurred with the staff’s recommendation not to require a permit for a proposed Marriott Hotel Project at 2900 Harbor Bay Parkway because: (1) the project plans, as revised per staff comments, met the development standards established by the Third Supplementary Agreement (as amended); and (2) the project proponent, Harbor Bay Hospitality, LLC, had agreed to (and subsequently did) enter into an agreement with the Commission to be bound by the TSA (as amended). Staff brought that matter to the Commission after a number of Alameda residents who live near the proposed project submitted comments arguing that the project proponent was not entitled to an exemption from BCDC permit requirements because the project proponent was not a party to the TSA. The staff report noted that BCDC staff, in collaboration with HBIA, has consistently applied the TSA (as amended) to HBIA’s successor owners, provided that the development proposal was consistent with the standards established by the TSA (as amended), in a number of prior instances including: (1) the Stacey-Witbeck Building; (2) the McGuire & Hester Office Building; and (3) the Westmont Living Senior Residential Facility.

The second project considered by the Commission along the Bay shoreline in the Harbor Bay Business Park, in August 2016 and February 2017, was a permit application for a proposed hotel development and associated public access improvements by Ram Hotels at 2350 Harbor Bay Parkway. Commission staff had determined that the project proposed by Ram Hotels was not entitled to an exemption from BCDC permitting requirements under the Third Supplementary Agreement (as amended) because, unlike the projects mentioned in the preceding paragraph, the Ram Hotels project was not consistent with the applicable land use designation in the TSA (as amended) for the project site. The Commission denied the permit application submitted by Ram Hotels. However, Ram Hotels has informed staff that it intends to reapply first to the City of Alameda (“City”) and then to BCDC for the necessary permits for its proposed hotel development project. Preapplication discussions between BCDC staff and Ram Hotels, in consultation with HBIA, led staff to recommend that the Commission, HBIA, and Ram Hotels enter into an agreement terminating the Third Supplementary Agreement (as amended). The following discussion provides the factual context and reasons for the staff’s recommendation.

As noted above, in March 2013, BCDC and HBIA amended the Third Supplementary Agreement for the third time. The purpose of the Third Amended Third Supplementary Agreement (“Third Amended TSA”) was to redesignate the area previously identified in the Third Supplementary



Agreement as the Shoreline Restaurant Site to the Shoreline Restaurant/Office Site in order to expand options for development and use of that site. (Each amendment to the Third Supplementary Agreement restates the entire agreement, as amended. Thus, since March 2013, the Third Amended TSA has been the operative version of the Third Supplementary Agreement.)

In 2014, Ram Hotels purchased the Shoreline Restaurant/Office Site from HBIA and proceeded to seek governmental approvals for development of a hotel on the site. In September 2015, the Alameda City Council approved the construction and operation of a hotel on the Shoreline Restaurant/Office Site on the condition that the permanent public improvements for public access to the shoreline in the area identified as the Shoreline Restaurant/Office Area in the Third Amended TSA be completed as part of construction of the hotel.

Because the Third Amended TSA required BCDC's Design Review Board to review updated final plans for the remaining public access improvements to be installed on the Shoreline Office/Restaurant Site and the adjacent parcel, after obtaining approval from the City, Ram Hotels submitted updated final plans for the proposed hotel development and related public access improvements to BCDC. Submission of these plans resulted in discussions among BCDC staff, HBIA, and Ram Hotels over whether BCDC may assert permitting jurisdiction over the proposed hotel development and whether the Third Amended TSA applied to Ram Hotels, as a successor to HBIA, to exempt the proposed hotel development from BCDC jurisdiction. After good faith discussion on the jurisdictional issue, Ram Hotels agreed to apply to BCDC for a permit for the proposed hotel development and associated public access improvements. In addition, BCDC staff agreed that if the Commission were to issue a permit for the proposed project, BCDC staff would propose that the Commission, HBIA, and Ram Hotels enter into a fourth amendment to Third Supplementary Agreement to reflect the project authorized and conditioned in the BCDC permit and to include the hotel project authorized by the BCDC permit as an approved land use for the Shoreline Restaurant/Office Site.

On August 4, 2016, the Commission held a public hearing on the application submitted by Ram Hotels for the proposed construction of a hotel and associated public access improvements. In response to comments and concerns raised at the hearing, Ram Hotels revised the site plan to increase the amount and quality of proposed public access, lower the building height, and change the building massing to improve the shoreline experience for visitors. On February 16, 2017, the Commission held another public hearing on the revised project. Following the public hearing and discussion, the Commission denied the revised application by a vote of eleven in favor, six opposed, and one abstention – two fewer than the 13 affirmative votes necessary for approval of the application, as required by Government Code section 66632.

On or about September 1, 2017, the City's approval of the proposed hotel development project, which required construction to be commenced within two years, lapsed.

In early 2020, Ram Hotels informed BCDC staff that Ram Hotels intends to reapply to the City and to BCDC for the necessary permits for the proposed hotel development and associated



public access improvements. However, while appreciating the need to obtain a permit from BCDC, Ram Hotels argued that it was first necessary to enter into a fourth amendment to the Third Supplementary Agreement to redesignate the area currently identified as the Shoreline Restaurant/Office Site to authorize a hotel as a permissible land use. Ram Hotels urged that such an amendment is necessary because the current City zoning designation for the subject parcel includes as a condition that use of the site should be consistent with the uses described in the Third Amended TSA for the Shoreline Restaurant/Office Site. In fact, after the City approved the hotel project in September 2015, litigation was filed against the City challenging the approval on a number of grounds including that the hotel use was inconsistent with and not authorized by the City's zoning ordinance. Thus, the land use designation for the Shoreline Restaurant/Office Site in the Third Amended TSA presents a significant obstacle for Ram Hotels to seek and obtain local discretionary approval from the City for the proposed hotel development project as required prior to Ram Hotels applying for a BCDC permit.

BCDC staff and Ram Hotels subsequently agreed, in consultation with HBIA, that rather than propose a fourth amendment to the Third Supplementary Agreement, it would be appropriate at this time to simply terminate the Third Amended TSA. Termination of the Third Amended TSA is warranted for the following reasons:

- At the present time, development of the Harbor Bay Business Park (as well as other areas of HBI) has been substantially completed. Furthermore, nearly all of the public access improvements expected for the shoreline park under the Third Amended TSA have been completed and are currently used by the public for public access to the Bay shoreline. The only exceptions are: (1) the Shoreline Restaurant/Office Site; (2) permanent public improvements on an adjacent parcel in the area identified as the Shoreline Restaurant/Office Area; and (3) ten public parking spaces adjacent to the Shoreline Restaurant/Office Site.
- Ram Hotels has agreed to apply for a BCDC permit for the proposed hotel development and associated public access improvements (including permanent public improvements on the adjacent parcel and ten public parking spaces). Therefore, an exemption from BCDC permitting requirements under the Third Amended TSA is no longer necessary or appropriate. In considering the permit application, the Commission will determine whether the proposed hotel development project would provide maximum feasible public access consistent with the project.
- Because development of Harbor Bay Business Park has been substantially completed and Ram Hotels has agreed to apply for a BCDC permit, the jurisdictional dispute between BCDC and HBIA, which was the underlying basis for the Third Supplementary Agreement (and the other settlement agreements between BCDC and HBIA) is moot.

- The Third Amended TSA has inadvertently put BCDC, rather than the City, in the position of designating the appropriate land use for the parcel currently designated as the Shoreline Restaurant/Office Site.
- Terminating the Third Amended TSA provides the opportunity to confirm that all future development or redevelopment of any areas formerly subject to the Third Amended TSA that are within an area of BCDC jurisdiction, as determined pursuant to Government Code section 66610, at the Harbor Bay Isle Shoreline Park, Harbor Bay Business Park - Phase III, shall be subject to BCDC permitting requirements in accordance with Government Code section 66632.

PRINCIPAL TERMS OF THE TERMINATION AGREEMENT

The following are the principal terms of the proposed Agreement Terminating Third Amended Third Supplementary Agreement:

Paragraph 1 terminates the Third Amended TSA.

Paragraph 2 provides that the City of Alameda, as the local jurisdiction in which the subject property is located, shall determine through its zoning ordinance and land-use permitting approval process the desirable and appropriate land use for parcel formerly referred to in the Third Amended TSA as the Shoreline Restaurant/Office Site.

Paragraph 3 provides that Ram Hotels shall apply to BCDC for a permit to construct, operate, and maintain a proposed hotel development project and to construct associated public access improvements. Paragraph 3 further provides that the areas within BCDC's jurisdiction at the project site shall be determined pursuant to Government Code sections 66610 and that BCDC shall consider the permit application in accordance with Government Code Sections 66632(f) and 66632.4 and applicable policies of the San Francisco Bay Plan. Paragraph 3 further provides that notwithstanding the termination of the Third Amended TSA, the public access improvements to be included in the permit application shall consist, at a minimum, of the public access improvements described for the Shoreline Restaurant/Office Site Area in the Third Amended TSA and ten public parking spaces consistent with those shown on the revised project plans submitted to BCDC on January 27, 2017.

Paragraph 4 provides that if the City does not approve a proposed hotel development project, or if Ram Hotels abandons its proposal for such a project, Ram Hotels or any successor in interest, shall apply to BCDC for a permit for any alternative proposed development project at the subject property.

Paragraph 5 provides that the Termination Agreement shall be recorded by BCDC, shall run with the land, and shall bind subsequent owners of the subject property, as well as any successors of HBIA and BCDC.



Finally, Paragraph 8 provides that the jurisdictional dispute between BCDC and HBIA regarding BCDC's permitting authority is moot now that development of HBI has been substantially completed along the Bay shoreline, except for subject property and the associated public access improvements for which Ram Hotels has agreed to apply to BCDC for permit. Paragraph 8 further provides, therefore, that all future development or redevelopment of any areas formerly subject to the Third Amended TSA that are within an area of BCDC jurisdiction, as determined pursuant to Government Code section 66610, at the Harbor Bay Isle Shoreline Park, Harbor Bay Business Park - Phase III, shall be subject to BCDC permitting requirements in accordance with Government Code section 66632.

Staff Recommendation

Staff recommends that the Commission approve and authorize the Executive Director to execute the proposed Agreement Terminating Third Amended Third Supplementary Agreement, Harbor Bay Isle Shoreline Park, Harbor Bay Business Park – Phase III, Alameda, California, attached hereto as Attachment/Exhibit A.

EXHIBIT A

**AGREEMENT TERMINATING THIRD AMENDED
THIRD SUPPLEMENTARY AGREEMENT**

Recorded at the request of
State of California
San Francisco Bay Conservation
and Development Commission

WHEN RECORDED, mail to:
San Francisco Bay Conservation
and Development Commission
375 Beale Street, Suite 510
San Francisco, California 94105

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free
Recording pursuant to
Government Code
Sections 6103 and 27383

NO TAX DUE

THIS SPACE FOR RECORDER

AGREEMENT TERMINATING
THIRD AMENDED THIRD SUPPLEMENTARY AGREEMENT

HARBOR BAY ISLE SHORELINE PARK
HARBOR BAY BUSINESS PARK - PHASE III
ALAMEDA, CALIFORNIA

This AGREEMENT TERMINATING THIRD AMENDED THIRD SUPPLEMENTARY AGREEMENT HARBOR BAY ISLE SHORELINE PARK, HARBOR BAY BUSINESS PARK - PHASE III, ALAMEDA, CALIFORNIA ("Agreement Terminating Third Amended Third Supplementary Agreement") is made and entered into this ____ day of _____, 2020, by and among the SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ("BCDC" or "COMMISSION"), HARBOR BAY ISLE ASSOCIATES, a California partnership ("HBIA"), and 1011 RAM FAIRFIELD AMA LLC, a Texas limited liability company ("Ram Hotels"). BCDC, HBIA, and Ram Hotels each are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. BCDC has jurisdiction over development projects and certain other activities in and around San Francisco Bay as set forth in California Government Code sections 66600 through 66694 inclusive (commonly referred to as the “McAteer-Petris Act”), including jurisdiction over an area extending one hundred feet (100’) inland of the line of highest tidal action at the Bay shoreline (referred to as the “shoreline band”).

B. HBIA is a California general partnership of which the general partner is Doric Realty, Inc., a California corporation. HBIA is the master developer of the planned community commonly called Harbor Bay Isle (“HBI”) on Bay Farm Island within the City of Alameda. HBIA originally owned all the land in HBI, but over time since 1975, HBIA subdivided and sold or otherwise transferred ownership of parcels of real property in HBI to other companies or persons for development thereon and retained some parcels for development on its own account. A portion of HBI is within the shoreline band.

C. Ram Hotels is a developer and operator of hotels. As discussed further below, in 2014, Ram Hotels purchased from HBIA a certain parcel of vacant land located within the Harbor Bay Business Park for the purposes of developing a new hotel thereon and to operate the hotel after construction.

D. In pertinent background, HBIA asserted that HBI was exempt from BCDC’s jurisdiction as “grandfathered” under the McAteer-Petris Act because the Bay fill activities that created HBI were underway prior to when BCDC came into existence in 1965, but BCDC did not accept that assertion of exemption. To resolve the dispute, in 1975 the Commission and HBIA entered into a settlement agreement in which they agreed to attempt in good faith to reach further supplementary agreements to define the nature and extent of public access to the Bay that would be provided at HBI as it was developed. Beginning in 1978, the Commission and HBIA entered into two supplementary agreements for residential tracts on the northerly side of HBIA under which areas were identified for dedication to the City of Alameda (“City”) and were intended to be developed and maintained as parts of a Shoreline Park that would extend all around the Bay edge of HBI. BCDC reviewed and approved the locations and dimensions of these portions of the Shoreline Park and the public access improvements therein, and BCDC did not assert jurisdiction over private development of parcels inland of the Shoreline Park in those tracts even if portions of those parcels were located within the shoreline band.

E. On September 21, 1984, BCDC and HBIA entered into that certain agreement entitled THIRD SUPPLEMENTARY AGREEMENT, HARBOR BAY ISLE SHORELINE PARK, HARBOR BAY BUSINESS PARK - PHASE III, ALAMEDA, CALIFORNIA (“Third Supplementary Agreement”), which set forth initial agreements and plans for construction of a Shoreline Park and public access improvements along the Bay edge of the portion of HBI planned to be developed as the Harbor Bay Business Park.

F. On March 18, 1987, BCDC and HBIA entered into that certain FIRST AMENDMENT TO THIRD SUPPLEMENTARY AGREEMENT, HARBOR BAY ISLE SHORELINE PARK, HARBOR BAY BUSINESS PARK - PHASE III, ALAMEDA, CALIFORNIA, which addressed revised plans and schedules for the phased construction of the Shoreline Park and public access improvements along the Bay edge of the Harbor Bay Business Park, with phases of the Shoreline Park along the Harbor Bay Business Park identified as Phase III and Phase IV.

G. As HBIA proceeded with testing and planning for the Marine Terminal facilities contemplated under the Third Supplementary Agreement, HBIA's consulting marine engineers and biologists recommended that the Marine Terminal facilities should be relocated from the originally planned location in the approximate center of the Phase III area northwesterly along the shoreline to a location further to the west that was served by deep water access sufficient to accommodate the vessel selected for ferry service. In HBIA's Master Plan for the Harbor Bay Business Park, the site originally contemplated for the Marine Terminal facilities was re-designated as a restaurant site.

H. On November 13, 1990, BCDC and HBIA entered into that certain SECOND AMENDMENT TO THIRD SUPPLEMENTARY AGREEMENT, HARBOR BAY SHORELINE PARK, HARBOR BAY BUSINESS PARK – PHASE III, ALAMEDA CALIFORNIA, which updated the anticipated schedule of the installation of the Phase III Shoreline Park along the Bay edge of the Harbor Bay Business Park, relocated the site of the proposed Marine Terminal further west from its original anticipated location, and broke down the Phase III Shoreline Park down into six (6) defined areas as component parts: (1) Marine Terminal Area; (2) Soft-Urban Landscape Area; (3) Corniche Area; (4) Shoreline Restaurant Site Area; (5) East Meadow Park; and (6) Lagoon Edge Area.

I. On February 5, 1991, HBIA filed Parcel Map 6024 in the Official Records of Alameda County that subdivided a portion of the remaining vacant land that HBIA at that time owned in the Harbor Bay Business Park. Parcel 1 of Parcel Map 6024 (“Parcel 1”) is the parcel then designated as the Shoreline Restaurant Site, and Parcel 4 of Parcel Map 6024 (“Parcel 4”) is the land between Parcel 1 and the Bay edge that HBIA planned to dedicate to the City of Alameda for inclusion within the Shoreline Park as shown on plans approved by BCDC's Design Review Board in 1990. In Parcel Map 6024, HBIA dedicated to the City a 17.5-foot wide pathway easement for pedestrian and bicycle pathways along the Harbor Bay Parkway edge of Parcel 1. HBIA arranged for the installation of temporary public access pathways in Parcel 4 and in the pathway easement along the Harbor Bay Parkway edge of Parcel 1.

J. From 1990 through 2012, HBIA made good faith efforts to attract restaurants to the contemplated Shoreline Restaurant Site on a build-to-suit or on a land purchase basis, but without success. After conducting due diligence, potential restaurant operators concluded that the number of employees of businesses located in the Harbor Bay Business Park and the relatively remote location not easily reached from other areas of the City or the surrounding East Bay cities did not amount to a reasonably available potential customer base sufficient to warrant the costs of construction and operation of a restaurant business at this location. The Shoreline

Restaurant Site Area has remained vacant and undeveloped since it was so designated in 1990 until the present, except for temporary interim public access improvements installed through it along the Bay edge and along the road curbside edge of Harbor Bay Parkway.

K. In 2012, HBIA approached BCDC and proposed that the Shoreline Restaurant Site should be re-designated as a Shoreline Restaurant/Office Site. After a series of meetings and site visits by BCDC staff, on March 15, 2013, BCDC and HBIA entered into that certain THIRD AMENDMENT TO THIRD SUPPLEMENTARY AGREEMENT, HARBOR BAY ISLE SHORELINE PARK, HARBOR BAY BUSINESS PARK – PHASE III, ALAMEDA, CALIFORNIA (“Third Amended Third Supplementary Agreement”), which re-designated the area previously identified as the Shoreline Restaurant Site (*i.e.*, Parcel 1) to a Shoreline Restaurant/Office Site in order to expand options for development and use of the site.

L. Since 1990, the final phases of the Harbor Bay Parkway roadway have been completed, parcels located within Phase III-A and Phase III-B of the Harbor Bay Business Park have been developed with commercial buildings and related improvements, and the Harbor Bay Ferry Terminal and its parking lot have been constructed, allowing for commuter passenger ferry service to be provided on a continuous basis to and from Downtown San Francisco since March of 1992. Further, nearly all of the public access improvements expected for the Phase III Shoreline Park under the Third Supplementary Agreement as previously amended and as approved by BCDC’s Design Review Board have been completed in conjunction with the completion of the respective phases of Harbor Bay Parkway and the Harbor Bay Ferry Terminal and are currently used by the public for public access to the Bay shoreline. The only exceptions are: (1) the Shoreline Restaurant/Office Site; (2) the permanent public improvements in the area identified as the Shoreline Restaurant/Office Area; and (3) ten public parking spaces in the East Meadow Area adjacent to the Shoreline Restaurant/Office Site which under the Third Amended Supplementary Agreement were expected to be installed as part of the construction of improvements on the Shoreline Restaurant/Office Site.

M. In 2013, HBIA listed the Shoreline Restaurant/Office Site on the commercial real estate market. In 2014, Ram Hotels purchased Parcel 1 from HBIA and proceeded to seek governmental approvals for development of a hotel on the Shoreline Restaurant/Office Site.

N. On February 18, 2014, the City adopted an ordinance amending the citywide zoning map to change the zoning designation for Parcel 1 (referred to in the zoning ordinance as Assessor’s Parcel No. 074-1362-005) from O (Open Space) to CM PD (Commercial Manufacturing with a Planned Development overlay) subject to specified conditions. Those conditions included, but were not limited to: (1) use of the parcel should be consistent with the uses described in the Third Amended Third Supplementary Agreement for the Shoreline Restaurant/Office Site; and (2) development of Parcel 1 must include public shoreline improvements on Parcel 4, including an enhanced public seating area and other appropriate amenities for viewing the Bay, and a plan for the reconstruction of the gap in the Bay Trail at this location.

O. On or about September 1, 2015, the Alameda City Council approved a Final Development Plan and Design Review for the construction and operation of a hotel on the Shoreline Restaurant/Office Site on condition that the permanent public improvements for public access to the shoreline in the area identified as the Shoreline Restaurant/Office Area be completed as part of construction of the hotel.

P. The Third Amended Third Supplementary Agreement required the submission to BCDC for review by BCDC's Design Review Board of updated final plans for the remaining public access improvements to be installed on Parcels 1 and 4. Therefore, after obtaining approval from the City, Ram Hotels submitted updated final plans for the proposed hotel development and related public access improvements to BCDC.

Q. The Third Amended Third Supplementary Agreement provides (in Paragraph 5) that it does not constitute modification or application of BCDC jurisdiction or controls as to any party other than HBIA. For this reason, the submission by Ram Hotels to BCDC of updated final plans for the remaining public access improvements to be installed on Parcels 1 and 4 resulted in a discussion among BCDC staff, HBIA, and Ram Hotels over whether BCDC may assert permitting jurisdiction over the proposed hotel development by a party other than HBIA, pursuant to Government Code section 66632, or whether the Third Amended Third Supplementary Agreement applied to Ram Hotels, as a successor to HBIA, to exempt the proposed hotel development from BCDC jurisdiction. After good faith discussion on the jurisdictional issue, Ram Hotels agreed to apply to BCDC for a permit for the proposed development of a new hotel on Parcel 1 and the remaining public access improvements to be installed on Parcels 1 and 4. In addition, BCDC staff agreed that if the Commission were to issue a permit for the proposed project, BCDC staff would propose that the Commission, HBIA, and Ram Hotels enter into a fourth amendment to the Third Supplementary Agreement to reflect the project authorized and conditioned in the BCDC permit and to include as an approved land use for Parcel 1 the hotel project and required public access improvements authorized by the BCDC permit.

R. In March 2016, Ram Hotels submitted a permit application to BCDC for the proposed hotel development, associated public access improvements on Parcels 1 and 4, and ten public parking spaces along Harbor Bay Parkway adjacent to the East Meadow Area. BCDC's Design Review Board reviewed the proposed hotel development project on May 9, 2016 and, in summary, advised Ram Hotels to: (1) remove parking spaces and relocate the hotel farther from the shoreline; (2) move the bike path to the shoreline area; (3) make the site more welcoming for the public; (4) relocate an enclosed public pathway at the south side of the building; and (5) return to the Design Review Board for further review.

S. On August 4, 2016, the Commission held a public hearing on the application submitted by Ram Hotels for the proposed construction of a hotel and associated public access within the Commission's shoreline band jurisdiction at 2350 Harbor Bay Parkway. In response to comments and concerns raised at the public hearing, on August 10, 2016, Ram Hotels temporarily withdrew the application from BCDC consideration to allow the development team

to evaluate possible revisions to the proposed project and to extend the time by which BCDC could act on the application. Ram Hotels subsequently revised the site plan to increase the amount and quality of proposed public access, lower the building height, and change the building massing to improve the shoreline experience for visitors. On January 27, 2017, Ram Hotels submitted revised project materials to BCDC and requested that its application, as revised, be reinstated for active reconsideration by BCDC.

T. On February 16, 2017, the Commission held another public hearing on the revised permit application and considered the revised project. Following the public hearing and discussion, the Commission denied the revised application by a vote of eleven in favor, six opposed, and one abstention – two fewer than the 13 affirmative votes necessary for approval of the application, as required by Government Code section 66632.

U. On or about September 1, 2017, the City’s approval of the proposed hotel development on Parcel 1, which required construction to be commenced within two years, lapsed.

V. On February 13, 2019, HBIA dedicated Parcel 4 to the City, as required by the Third Amended Third Supplementary Agreement.

W. In early 2020, Ram Hotels informed BCDC staff that Ram Hotels intends to reapply to the City and to BCDC for the necessary permits or approvals for the proposed hotel development on Parcel 1 and for associated public access improvements on Parcels 1 and 4. Furthermore, BCDC staff and Ram Hotels agreed, in consultation with HBIA, that because Ram Hotels has agreed to apply for a BCDC permit for the proposed hotel development and associated public access improvements, and because the Third Amended Third Supplementary Agreement has been fully implemented by HBIA or other parties, except with respect to Parcel 1 and the public access improvements to be installed on Parcels 1 and 4, including the ten public parking spaces in or adjacent to the East Meadow Area, the Third Amended Third Supplementary Agreement is no longer necessary and, therefore, it would be appropriate at this time to terminate the Third Amended Third Supplementary Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

1. Third Amended Third Supplementary Agreement Terminated. The Third Amended Third Supplementary Agreement is hereby terminated, and no agreement between BCDC and HBIA any longer applies to Parcel 1 and Parcel 4.

2. City of Alameda to Determine Appropriate Land Use. As the local jurisdiction in which the subject property is located, the City of Alameda shall determine, through its zoning ordinance and land-use permitting approval process, the desirable and appropriate land use for Alameda County Assessor’s Parcel No. 074-1362-005, formerly referred to in the Third Amended Third Supplementary Agreement as the Shoreline Restaurant/Office Site and also referred to herein as Parcel 1.

3. Ram Hotels Shall Apply for a BCDC Permit. Ram Hotels shall apply to BCDC for a permit, in accordance with Government Code section 66632, to construct, operate, and maintain a proposed hotel development project on Parcel 1 and to construct the associated public access improvements on Parcels 1 and 4. The areas within BCDC's jurisdiction at Parcels 1 and 4 shall be determined pursuant to Government Code sections 66610, and BCDC shall consider the permit application submitted by Ram Hotels in accordance with Government Code Sections 66632(f) and 66632.4 and applicable policies of the San Francisco Bay Plan. Notwithstanding the termination of the Third Amended Third Supplementary Agreement, the public access improvements to be included in the permit application submitted by Ram Hotels shall consist, at a minimum, of the public access improvements described in Paragraph 6.B.4 (Shoreline Restaurant/Office Site Area) of the Third Amended Third Supplementary Agreement and ten public parking spaces consistent with those shown on the revised project plans submitted to BCDC on January 27, 2017.

4. A BCDC Permit Shall Be Required for Any Alternative Development Proposal. If the City does not approve a proposed hotel development project on Parcel 1, or if Ram Hotels for any reason abandons its proposal for such a project, Ram Hotels or any successor in interest, including any subsequent owner of Parcel, shall apply to BCDC for a permit for any alternative proposed development project for Parcel 1.

5. Agreement Will Run with the Land and Bind Successors. This Agreement Terminating Third Amended Third Supplementary Agreement shall be recorded by BCDC, shall run with the land, and shall bind subsequent owners of Alameda County Assessor's Parcel No. 074-1362-005, as well as any successors of HBIA and BCDC.

6. Notices. Any notice or information required or desired to be given hereunder shall be deemed to be effective if addressed to the Party in writing and delivered to an officer of the Party to whom the notice is addressed or ten days after mailing by certified mail to the Parties at the following addresses:

BCDC: San Francisco Bay Conservation and Development Commission
375 Beale Street, Suite 510
San Francisco, CA 94105
Attn: Chief Counsel

HBIA: Harbor Bay Isle Associates
c/o Doric Realty, Inc.
200 Packet Landing Road, 2nd Floor
Alameda, CA 94502
Attn: President

Ram Hotels: 1011 Ram Fairfield Ama LLC
21 Prestwick Lane
Amarillo, Texas 79124
Attn: Mina Patel

With a copy to:
David Mullin
Mullin Hoard & Brown LLP
500 S. Taylor—Suite 800
Amarillo, TX. 79101

7. **Amendment.** This Agreement Terminating Third Amended Third Supplementary Agreement may be amended only by a written agreement or addendum signed by all the Parties hereto. A non-material amendment may be approved on behalf of BCDC by BCDC's Executive Director.

8. **Future Development or Redevelopment of Harbor Bay Isle Shoreline Park, Harbor Bay Business Park Subject to BCDC Permit Requirements.** The settlement agreement entered into by BCDC and HBIA in 1975, and the several supplementary agreements and amendments thereto subsequently entered into by BCDC and HBIA (including the Third Amended Third Supplementary Agreement), resolved a dispute between BCDC and HBIA regarding whether HBIA was required to obtain permits from BCDC to develop the planned community commonly referred to as Harbor Bay Isle ("HBI") and specified the public access and public access improvements that would be provided along the Bay shoreline as part of that planned community. Now that development of HBI has been substantially completed along the Bay shoreline, except for Parcel 1 and the public access improvements on Parcels 1 and 4, for which Ram Hotels has agreed to apply to BCDC for permit, the jurisdictional dispute between BCDC and HBIA is moot. Therefore, all future development or redevelopment of any areas formerly subject to the Third Amended Third Supplementary Agreement that are within an area of BCDC jurisdiction, as determined pursuant to Government Code section 66610, at the Harbor Bay Isle Shoreline Park, Harbor Bay Business Park - Phase III, shall be subject to BCDC permitting requirements in accordance with Government Code section 66632.

9. **Recording.** Within thirty (30) days of execution by all parties, BCDC shall record this Agreement Terminating Third Amended Third Supplementary Agreement with the Alameda County Recorder's Office as affecting Alameda County Assessor's Parcel No. 074-1362-005 and all other parcels within the Harbor Bay Isle, Harbor Bay Business Park - Phase III.

10. **Governing Law.** This Agreement Terminating Third Amended Third Supplementary Agreement shall be governed by and interpreted under the laws of the State of California.

11. **Recitals.** The recitals set forth above are incorporated into the terms of this Agreement Terminating Third Amended Third Supplementary Agreement.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT TERMINATING THIRD AMENDED THIRD SUPPLEMENTARY AGREEMENT as of the day and year written above.

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION, A State Agency

By: _____
Larry Golzband
Executive Director

HARBOR BAY ISLE ASSOCIATES,
a California General Partnership

By: _____
Doric Realty, Inc.,
a California Corporation
Its Managing General Partner

By: _____
John Martin
Its President

1011 RAM FAIRFIELD AMA LLC,
a Texas limited liability company

By: _____
Mina Patel
Its Managing Member

[Notarized Signatures]

EXHIBIT B

HARBOR BAY BUSINESS PARK

Third Supplementary Agreement Harbor Bay Business Park – Phase 3

The TSA was amended in 1987, 1990, and 2013.

Third Amended Third Supplementary Agreement changed the land use designation of one parcel from Shoreline Restaurant to Shoreline Restaurant/Office.

1. Marriott Hotel Project (2900 Harbor Bay Parkway)
2. McGuire & Hester Office Building
3. Stacey-Witbeck Building
4. Ram Hotels Project Site (2390 Harbor Bay Parkway).

