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San Carlos, CA 94070

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DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF SAN CARLOS

AND

ARE-SAN FRANCISCO NO. 88, LLC

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“**Development Agreement**”) is made and entered into as of [date], 2025 (“**Agreement Date**”) by and between the CITY OF SAN CARLOS, a municipal corporation organized and existing under the laws of the State of California (“**City**”), and ARE-SAN FRANCISCO NO. 88, LLC, a Delaware limited liability company (“**ARE**”) (ARE or its successors and assigns are referred to herein as “**Developer**”). City and Developer are referred to individually as “**Party**,” and collectively as the “**Parties**.”

RECITALS

This Development Agreement is entered upon the basis of the following facts, understandings and intentions of City and Developer.

A. The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development, and discourage investment in and commitment to comprehensive planning that would make maximum efficient utilization of resources at the least economic cost to the public.

B. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 et seq. of the Government Code (the “**Development Agreement Legislation**”), which authorizes City and a developer having a legal or equitable interest in real property to enter into a binding development agreement, establishing certain development rights in the property.

C. Pursuant to Government Code Section 65865, City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements, which procedures and requirements are contained in the San Carlos Municipal Code Chapter 18.37 (the “**City Development Agreement Regulations**”). This Development Agreement has been processed in accordance with the City Development Agreement Regulations.

D. Developer owns certain real property consisting of approximately 25.34 acres located at 900 and 960 Industrial Road, 961 and 1003 through 1015 Commercial Street, and 915, 1055, and 1063 Old County Road, as more particularly described in Exhibit A, and as diagrammed in Exhibit B attached hereto (the “**Property**”).

E. Developer proposes to demolish all existing structures and associated improvements on the Property and develop the Property with approximately 1,630,000 square feet of gross floor area of Class A office/research and development buildings, which may include a café and/or tenant amenities (possibly including a childcare center); surface parking lots and parking garages; and associated improvements (the “**Project**”). Developer currently anticipates that the Project will be constructed in three phases, as follows: the first phase is anticipated to consist of two office/research and development buildings totaling approximately 537,000 square feet of gross floor area and surface parking lots, (“**Phase I**”); the second phase is anticipated to consist of two office/research and development buildings and the amenity building totaling

approximately 514,382 square feet of gross floor area and a parking garage (“**Phase II**”); and the third phase is anticipated to consist of two office/research and development buildings totaling approximately 683,150 square feet of gross floor area and a parking garage (“**Phase III**”). The Parties acknowledge that the number, location, and sequencing of Project phases is subject to change at the election of Developer.

F. The complexity, magnitude and long-range nature of the Project would be difficult for Developer to undertake if City had not determined, through this Development Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the Project. As a result of the execution of this Development Agreement, both Parties can be assured that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project.

G. City desires to advance the socioeconomic interests of City and its residents by promoting the productive use of property and encouraging quality development and economic growth, thereby enhancing employment opportunities for residents and expanding City’s property tax base. City also desires to gain the Community Benefits (as defined in Section 2.1) of the Project, which are in addition to those dedications, conditions, and exactions required by laws or regulations and as set forth in this Development Agreement, and which advance the planning objectives of, and provide benefits to, City.

H. City has determined that by entering into this Development Agreement: (1) City will ensure the productive use of property and foster orderly growth and quality development in City; (2) development will proceed in accordance with the goals and policies set forth in the City of San Carlos General Plan (the “**General Plan**”) and the goals, principles, and priorities set forth in City’s East Side Innovation District Vision Plan (the “**Vision Plan**”) and will implement City’s stated General Plan and Vision Plan policies; (3) City will receive substantially increased property tax and sales tax revenues; (4) City will benefit from increased employment opportunities for residents of City created by the Project; and (5) City will receive Community Benefits provided by the Project for the residents of City.

I. Developer has applied for, and City has granted, the Project Approvals (as defined in Section 1.4). As part of the Project Approvals, City has undertaken, pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq., hereinafter “**CEQA**”), the required analysis of the environmental effects that would be caused by the Project and has determined those feasible mitigation measures that will eliminate, or reduce to an acceptable level, the adverse environmental impacts of the Project. The environmental effects of the proposed development of the Property were analyzed by the EIR (as defined in Section 1.4.1) certified by City on [date] in connection with the Project. City has also adopted a mitigation monitoring and reporting program (the “**MMRP**”) to ensure that those mitigation measures incorporated as part of, or imposed on, the Project are enforced and completed. Those mitigation measures for which Developer is responsible are incorporated into, and required by, the Project Approvals.

J. In addition to the Project Approvals, the Project may require various additional land use and construction approvals, termed Subsequent Approvals (as defined in Section 1.4.10), in connection with development of the Project.

K. City has given the required notice of its intention to adopt this Development Agreement and has conducted public hearings thereon pursuant to Government Code Section 65867. As required by Government Code Section 65867.5, City has found that the provisions of this Development Agreement and its purposes are consistent with the goals, policies, standards and land use designations specified in City's General Plan and the goals, principles, and priorities of the Vision Plan.

L. On April 21, 2025, the City of San Carlos Planning and Transportation Commission ("**Planning Commission**"), the initial hearing body for purposes of development agreement review, held a duly noticed public hearing and recommended approval of this Development Agreement pursuant to Resolution No. PC2025-04. On [date], the City of San Carlos City Council ("**City Council**") held a duly noticed public hearing and adopted its Ordinance No. 1623 approving this Development Agreement and authorizing its execution.

M. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Development Agreement is appropriate. This Development Agreement will eliminate uncertainty regarding Project Approvals (including the Subsequent Approvals), thereby encouraging planning for, investment in and commitment to use and development of the Property. Continued use and development of the Property will in turn provide substantial employment and property and sales tax benefits as well as other public benefits to City, and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Legislation was enacted.

N. The terms and conditions of this Development Agreement have undergone extensive review by City staff, and by its Planning Commission and its City Council at publicly noticed meetings and have been found to be fair, just and reasonable and in conformance with the City General Plan, the Development Agreement Legislation, and the City Development Agreement Regulations and, further, the City Council finds that the economic interests of City's residents and the public health, safety and welfare will be best served by entering into this Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, City and Developer agree as follows:

ARTICLE 1. GENERAL PROVISIONS

1.1. Parties.

1.1.1. City. City is a California municipal corporation, with offices located at 600 Elm Street, San Carlos, CA 94070. "City," as used in this Development Agreement, shall include City and any assignee of or successor to its rights, powers and responsibilities.

1.1.2. Developer. Developer is a limited liability corporation with offices located at 26 North Euclid Avenue, Pasadena, CA 91101. “Developer,” as used in this Development Agreement, shall include any permitted assignee or successor-in-interest as herein provided.

1.2. Property Subject to this Development Agreement. All of the Property, as described in Exhibit A and shown in Exhibit B, shall be subject to this Development Agreement.

1.3. Term.

1.3.1. Effective Date. This Development Agreement shall become effective upon the effectiveness of the ordinance approving this Development Agreement (the “**Effective Date**”).

1.3.2. Term of the Agreement. The term (“**Term**”) of this Development Agreement shall commence upon the Effective Date and shall continue in full force and effect for a period of fifteen (15) years, unless extended or earlier terminated as provided in this Development Agreement. The Term has been established by the Parties as a reasonable estimate of the time required to develop the Project and obtain the Community Benefits of the Project.

1.4. Project Approvals.

As of the Effective Date, Developer has applied for and obtained various environmental and land use approvals and entitlements related to the development of the Project, as described below. For purposes of this Development Agreement, the term “**Project Approvals**” shall mean all of the approvals, plans and agreements described in this Section 1.4.

1.4.1. EIR and MMRP. The Environmental Impact Report (State Clearinghouse No. 2021060668), which was prepared pursuant to CEQA, was recommended for certification by the Planning Commission on April 21, 2025, by Resolution No. PC2025-03, and certified with findings by the City Council on [date], by Resolution No. 2025-40 (certifying EIR) and Resolution No. 2025-40 (adopting findings and the MMRP) (the “**EIR**”).

1.4.2. Development Agreement. On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. 1623, approved this Development Agreement and authorized its execution.

1.4.3. Planned Development Rezoning. On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. 1622, approved the Planned Development Rezoning of the Property (the “**PD Rezoning**”).

1.4.4. Planned Development Plan. On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. 1622, approved Planned Development Plan No. PD-32 for the Project (the “**PD Plan**”). The PD Plan includes the Master Sign Program for the Project.

1.4.5. Design Review Certificate. On April 21, 2025, after a duly noticed public hearing, the Planning Commission approved the Design Review Certificate for Phase I.

1.4.6. Tentative Parcel Map. On April 21, 2025, after a duly noticed public hearing, the Planning Commission approved a Tentative Parcel Map for the Project (the “**Tentative Parcel Map**”).

1.4.7. Protected Tree Removal Permit. On April 21, 2025, after a duly noticed public hearing, the Planning Commission approved a Protected Tree Removal Permit for the Project (the “**Tree Permit**”).

1.4.8. Transportation Demand Management Program. On April 21, 2025, after a duly noticed public hearing, the Planning Commission approved the Transportation Demand Management Program, dated March 2025, for the Project (the “**TDMP**”).

1.4.9. Grading and Dirt Haul Certificate. On April 21, 2025, after a duly noticed public hearing, the Planning Commission approved the Grading and Dirt Haul Certificate for the Project.

1.4.10. Subsequent Approvals. In order to develop the Project as contemplated in this Development Agreement, the Project may require land use approvals, entitlements, development permits, and use and/or construction approvals other than those listed in Sections 1.4.1 through 1.4.9 above, which may include, without limitation: development plans, conditional use permits, variances, subdivision approvals, street abandonments, design review approvals, demolition permits, improvement agreements, infrastructure agreements, grading permits, dirt hauling permits, building permits, grading and dirt haul certificates, right-of-way permits, lot line adjustments, site plans, sewer and water connection permits, certificates of occupancy, parcel maps, lot splits, landscaping plans, sign permits, encroachment permits, and amendments thereto and to the Project Approvals (collectively, “**Subsequent Approvals**”). At such time as any Subsequent Approval applicable to the Property is approved by the City, then such Subsequent Approval shall become subject to all the terms and conditions of this Development Agreement applicable to Project Approvals and shall be treated as a “Project Approval” under this Development Agreement.

1.5. Definitions. The capitalized terms used in this Development Agreement shall have the meanings set forth in Appendix I attached hereto.

ARTICLE 2.

COMMUNITY BENEFITS AND ADDITIONAL BENEFICIAL PROJECT FEATURES

2.1. Community Benefits. In consideration of, and in reliance on, City agreeing to the provisions of this Development Agreement, Developer will provide the community benefits (“**Community Benefits**”) described in Sections 2.2 through 2.8, which are over and above those dedications, conditions and exactions required by laws or regulations. City and Developer agree that, if Developer constructs the full 1,742,553 square feet of the Project, the Community Benefits shall be deemed to have a Community Benefits value of \$50,300,000 in the aggregate.

2.2. Community Benefit Payments.

2.2.1. Developer shall make payments (“Community Benefit Payments”) to City as provided in this Section 2.2. City shall deposit each of Developer’s Community Benefit Payments into the City fund of its choice, in its sole discretion, for expenditure by City in accordance with the terms of each fund.

2.2.2. Developer shall make the Community Benefits Payments as follows:

- a. Twenty Dollars (\$20.00) per square foot for the first Five Hundred Thousand (500,000) square feet of interior space of any building other than a parking garage, including hallways, restrooms, and elevators and excluding rooms used solely for equipment such as the HVAC and plumbing system components and boilers and subterranean parking areas (“**Gross Occupiable Building Space**”) constructed in the Project, payable on a pro rata basis upon issuance of each building permit for vertical development.
- b. Twenty-Four Dollars (\$24.00) per square foot for the next Five Hundred Thousand (500,000) square feet of Gross Occupiable Building Space constructed in the Project, payable on a pro rata basis upon issuance of each building permit for vertical development.
- c. Twenty-Eight and 35/100 Dollars (\$28.35) per square foot for each square foot of Gross Occupiable Building Space in excess of One Million (1,000,000) constructed in the Project, payable on a pro rata basis upon issuance of each building permit for vertical development.

2.3. Public Artwork. Pursuant to the City of San Carlos Public Arts Master Plan adopted by the City Council on July 11, 2011 (“**Arts Master Plan**”), Developer shall submit to the City’s Public Art Selection Committee proposed works of art on the Property (“**Public Artwork**”) for approval of the Public Artwork and the placement of the Public Artwork. The Public Artwork shall be valued at not less than Three Hundred Thousand Dollars (\$300,000.00) in the aggregate, including the cost of delivery and installation. Developer may install the Public Artwork in phases, with the Public Artworks valued at no less than One Hundred Thousand Dollars (\$100,000.00), including the cost of delivery and installation, installed prior to the final certificate of occupancy in each of Phase I, Phase II, and Phase III of the Project. Developer shall provide City invoices and agreements evidencing the amount Developer will pay the artist and contractors for preparation, delivery, and installation of the Public Artwork.

2.4. Creek/Trail Improvements. Subject to approval of all necessary permits and agreements with all governmental agencies having jurisdiction on commercially reasonable terms and conditions (“**Creek Permits**”) and obtaining all necessary rights of entry and landowner and tenant consents on commercially reasonable terms (“**Creek Rights of Entry**”), Developer shall construct the following improvements (collectively, the “**Creek/Trail Improvements**”):

2.4.1. Project Creek Improvements. Subject to the terms of this Section 2.4, Developer shall construct certain improvements to Pulgas Creek on the Property, as conceptually depicted in Exhibit C (“**Project Creek Improvements**”). The Parties acknowledge and agree that the Project Creek Improvements are not Community Benefits. Further, solely for purposes of ensuring that City has a remedy if the Project Creek Improvements are not constructed as set forth in this Section 2.4, City and Developer agree that the Project Creek Improvements shall be deemed to have a value of \$2,850,000.

2.4.2. Off-Site Creek Improvements. Subject to the terms of this Section 2.4, Developer shall construct off-site improvements to Pulgas Creek as conceptually depicted in Exhibit C (“**Off-Site Creek Improvements**,” and together with the Project Creek Improvements, “**Creek Improvements**”). Developer and City agree that the Off-Site Creek Improvements shall be deemed to have a Community Benefits value of \$2,850,000.

2.4.3. Creek Trail. Subject to the terms of this Section 2.4, Developer shall construct a bike and pedestrian trail along Pulgas Creek as conceptually depicted in Exhibit C (“**Creek Trail**”), which must connect to the existing bridge marked on Exhibit D that provides access to 930-1030 Brittan Avenue (“**Bridge**”). The Creek Trail as depicted is part of the integrated flood control system supporting the Project Creek Improvements for efficiency and maximum benefit to the Project and the community. Developer and City agree that the Creek Trail shall be deemed to have a Community Benefits value of \$2,000,000.

2.4.4. Timing.

a. Developer, at its sole cost and expense, shall diligently pursue the Creek Permits and the Creek Rights of Entry with the goal to obtain the Creek Permits and the Creek Rights of Entry prior to the issuance of the first building permit for Phase II. Provided that Developer has obtained the Creek Permits and Creek Rights of Entry, Developer shall commence construction of the Creek/Trail Improvements upon issuance of the first building permit for Phase II and complete construction of the Creek/Trail Improvements no later than issuance of the first certificate of occupancy for any building in Phase II of the Project other than a parking garage (“**First Phase II Building COO**”).

b. If, despite its diligent efforts, Developer is unable to obtain the Creek Permits and/or the Creek Rights of Entry for the Creek Improvements in time to commence construction of the Creek/Trail Improvements in accordance with Section 2.4.4.a, then prior to issuance of the First Phase II Building COO, Developer shall (i) provide notice to City (“**Creek Notice**”) that it has not secured the Creek Permits and/or Creek Rights of Entry, as applicable, (ii) deposit the amount of \$7,125,000 into an interest-bearing escrow account; and (iii) submit to City an addendum to the Phase II Design Review Certificate that provides an alternative design for a bike and pedestrian trail along Pulgas Creek, which must be approved by the City Council, connect to the Bridge, and not require Creek Permits or Creek Rights of Entry (“**Alternative Creek Trail**”), and Developer shall have no further obligation to construct the Creek Trail but shall be obligated to complete construction of the Alternative Creek Trail no later than the earlier to occur of the last Phase II building certificate of occupancy or four (4) years after the first Phase II Building COO. Notwithstanding the foregoing, in the event that the Creek Permits and Creek Rights of Entry are obtained prior to Developer’s commencement of

construction of the Alternative Creek Trail, Developer, in its sole discretion, may elect to construct the Creek Trail instead of the Alternative Creek Trail, in accordance with this Section 2.4.4.b.

c. No later than thirty (30) days after Developer's delivery of the Creek Notice, City, at its sole election and its sole cost and expense, may deliver notice to Developer that City intends to pursue the Creek Permits and/or Creek Rights of Entry, as applicable, for the Creek Improvements. City shall notify Developer of City's election to pursue the Creek Permits and/or Creek Rights of Entry and thereafter shall coordinate with Developer in City's efforts to secure the Creek Permits and/or Creek Rights of Entry, including providing Developer with drafts of all (i) Creek Permits for review and approval prior to final approval of such Creek Permits by the applicable agencies and (ii) all Creek Rights of Entry for review and approval prior to final approval of such Creek Rights of Entry by the applicable landowners and tenants.

d. If City timely elects to and is able to secure the Creek Permits and/or Creek Rights of Entry, as applicable, such that Developer has all necessary authorizations (including Creek Rights of Entry and Creek Permits) to construct the Creek Improvements prior to the earlier to occur of the following (the "**Outside Release Date**"): (i) a building permit for construction of the last building in the Project other than a parking garage, or (ii) the expiration or earlier termination of this Development Agreement, City shall provide notice to Developer that it has secured the Creek Permits and/or Creek Rights of Entry, as applicable, along with copies thereof, and Developer thereafter shall construct the Creek Improvements in accordance with this Section 2.4, and the funds deposited in the escrow account under Section 2.4.3.b shall be released to Developer within thirty (30) days after City's notice. If the City does not timely exercise this election, Developer must continue to exercise good faith efforts to obtain the Creek Permits and/or Creek Rights of Entry, as applicable. If all Creek Permits and Creek Rights of Entry have not been obtained by City or Developer at the Outside Release Date, (a) the funds deposited in the escrow account under Section 2.4.4.b shall be released to City, and (b) Developer shall have no further obligation to pursue the Creek Permits or Creek Rights of Entry or to construct the Creek Improvements.

2.5. Easements and Agreements.

2.5.1. Public Access Easement. Prior to the commencement of construction of the Creek Trail or Alternative Creek Trail, the Parties shall enter into a recordable public access easement agreement in substantially the form attached hereto as Exhibit E memorializing Developer's obligation to maintain and provide public access the Creek Trail or Alternative Creek Trail, as applicable. The public access easement shall allow Developer to establish reasonable rules and regulations (including without limitation, amend them from time to time, and post them in a reasonably conspicuous place on the Creek Trail or Alternative Creek Trail, as applicable. The public access easement shall terminate in the event that City grants consent to termination in its sole and absolute discretion or in the event that any of the following occur: (a) the Project is damaged or destroyed by a fire, earthquake, explosion, tornado, flood, or hurricane or other casualty (collectively, "**Casualty**"), the Project is completely demolished following the Casualty, and the Project is not reconstructed; (b) all or a portion of the Property is acquired by a public entity exercising its power of eminent domain or under threat of condemnation; or (c) the

Property no longer is operating as the Project, Developer in its sole discretion offers the Creek Trail or Alternative Creek Trail, as applicable, for dedication to the City, and the City does not accept the offer of dedication.

2.5.2. Bridge Agreement. The owner of 930-1030 Brittan Avenue (“**Brittan Owner**”) is required by the City’s conditions of approval of its project to provide public access to the Bridge. Developer shall use reasonable, good faith efforts to enter into an agreement with the owner of 930-1030 Brittan Avenue (“**Brittan Owner**”) prior to the issuance of the first certificate of occupancy for any building in Phase I of the Project other than a parking garage (“**First Phase I Building COO**”) to allocate maintenance responsibility for the Bridge between Developer and Brittan Owner. If Developer is able to obtain such an agreement, then prior to issuance of the First Phase I Building COO, Developer shall grant City a recordable, non-exclusive easement in substantially the form attached hereto as Exhibit J for the limited purpose of public pedestrian and bicycle access on the portion of the Bridge located within the Property commencing upon completion of the Creek Trail or Alternative Creek Trail, as applicable, and confirmation that the Bridge is safe for public access. The Bridge easement shall allow Developer to establish reasonable rules and regulations, amend them from time to time, and post them in a reasonably conspicuous place on the Bridge. If, despite its reasonable, good faith efforts, Developer cannot obtain such maintenance agreement with Brittan Owner, Developer shall have no obligation to grant public access to the portion of the Bridge on the Property. In no event shall Developer have any obligation under this Development Agreement to improve or maintain the portion of the Bridge located on 930-1030 Brittan Avenue. In no event shall City have any obligation under this Development Agreement to maintain the Bridge.

2.6. Transportation Management Association Formation. Developer shall cooperate with City to form a Transportation Management Association (“**TMA**”) that will implement transportation demand management services that facilitate the movement of people within the area of the Vision Plan. Developer and City agree that the formation of the TMA shall be deemed to have a Community Benefits value of \$100,000. Developer shall implement the following actions no later than one (1) year following final approval of the Project Approvals and expiration of all applicable periods for administrative, judicial, or referendum challenge thereto without the filing of such challenge, or if filed, the final resolution of such challenge on terms acceptable to Developer in its sole discretion:

2.6.1. TMA Plan. Developer shall prepare and submit a TMA plan (“**TMA Plan**”) for the Planning and Transportation Commission’s review and recommendation to the City Council, and approval of the City Council. The TMA Plan must include a funding plan sufficient to achieve the TMA goals and must identify the purpose of the TMA (including the participants and the TMA boundaries and phasing), existing and approved projects in the TMA boundaries (including land uses, transit and transportation hubs, and adjacent communities), TMA goals (including implementation of the City Transportation Demand Management ordinance and future expansion areas), the TMA Board of Directors (including structure and membership, governance, and legal obligations), and TMA programming responsibilities (initial programming and costs, owner responsibilities, and fee structure). Nothing in this Section 2.6.1 shall obligate Developer to pay for the funding of the TMA other than any obligation it may have in its capacity as a member to pay TMA fees commensurate with those paid by other members.

2.6.2. Bylaws. Developer shall submit to the City a draft of proposed bylaws for the TMA and thereafter shall work cooperatively with the City to complete the bylaws. The bylaws shall require that the Board of Directors for the TMA include at least one director selected by the City Manager or his or her designee, provided that such director shall not be a member of the City Council.

2.6.3. Service Area. The TMA service area shall initially be the Vision Plan area, but the bylaws and other governing documents of the TMA and the TMA Plan shall provide for expansion of the TMA to adjacent areas. Developer shall work cooperatively with the City to expand the boundaries of the TMA service area.

2.6.4. Board of Directors. Developer, in consultation with the City, shall form the initial Board of Directors for the TMA, which initially will meet on the schedule set forth in the TMA Plan. The Board of Directors will determine the scope, budget, fees, and timeline for commencement of operations of the TMA in accordance with the TMA Plan. Developer will serve as the initial Secretary of the Board of Directors.

2.6.5. TMA Membership. Developer shall remain an active member of the TMA in accordance with the Project Approvals.

2.7. School District Contribution. In 2020, Developer contributed One Million Dollars (\$1,000,000.00) to the San Carlos School District to help San Carlos schools address the challenges of the COVID-19 pandemic. Developer has also contributed Five Hundred Thousand Dollars (\$500,000) to the San Carlos Education Foundation and has an agreement with the San Carlos Education Foundation to contribute an additional Five Hundred Thousand Dollars (\$500,000) by 2031.

2.8. Commercial Street. The Project includes (i) resurfacing of the vehicular roadway cross-section of Commercial Street and (ii) streetscape improvements, including a new bicycle trackway, sidewalk, and double row of trees, on the south side of Commercial Street, from the western edge of Industrial Road to the western edge of Old County Road (as conceptually depicted in Exhibit F).

2.9. Additional Beneficial Project Features. In consideration of, and in reliance on, City agreeing to the provisions of this Development Agreement, Developer will provide the additional beneficial project features (“**Beneficial Project Features**”) described in Sections 2.9 and 2.10, which are over and above (i) those dedications, conditions and exactions required by laws or regulations and (ii) the Community Benefits. The Parties agree that the value of the Beneficial Project Features is not included in the Community Benefit value identified in Section 2.1 above.

2.9.1. Use of Campus Parking. Commencing upon the issuance of the certificate of occupancy for the first parking garage in the Project, Developer shall designate and provide spaces in that parking garage such that the Creek Trail or Alternative Creek Trail, as applicable, the portion of the Bridge on the Property, and those Beneficial Project Features that are publicly accessible pursuant to Sections 2.9.2 through 2.9.4 shall have parking spaces with reasonably convenient access located within that parking garage for use by members of the public at no

charge while using the Community Amenities or Beneficial Project Features on the Project site, and the Parties shall enter into a recordable Public Parking Agreement in substantially the form attached as Exhibit G. The number of designated spaces shall equal at least three percent (3%) of the parking spaces in the Project's largest planned parking garage. The designated spaces shall be marked with clear signage and available for the public's use daily from 8:00 a.m. to 10:00 p.m. Such designated spaces shall be excluded for purposes of determining whether the parking provided at the Project complies with the Applicable Law.

2.9.2. Use of Campus Amenity Building and Project Event Space.

a. The intention for the campus amenity building is to provide for needed services for campus users but also open and available to the larger community. Developer currently anticipates constructing the campus amenity building in the Project for use as a meeting/event space, restaurant/café, retail space, bicycle/micro-mobility center, fitness/wellness center, and/or childcare center ("**Amenity Uses**"). The campus amenity building will be included as part of the standard Design Review Certificate process for Phase II. In the event Developer proposes a use for the campus amenity building that is materially different than the Amenity Uses, the Director shall have discretion to refer the proposed use to the City Council for approval.

b. If and for so long as some or all of the common area in the Project (excluding any private tenant space) is constructed and operated as a meeting/event space ("**Project Event Space**"), Developer shall make such Project Event Space available for rental by non-profits or other not-for-profit community organizations with principal offices within the City limits or that serve persons within the City limits (each individually, a "**Community Group**" and collectively, the "**Community Groups**") and the City. If the Project Event Space is not constructed and operated, and until such time as Developer opens to the public any Project Event Space, Developer shall make any alternative meeting/event space that Developer controls and operates in the City ("**Alternative Event Space**") available for rental by Community Groups and the City on the terms set forth in this Section 2.9.2.b. The Project Event Space or the Alternative Event Space is referred to hereafter as the "**Event Space**." The Event Space must be in the City of San Carlos with a total of at least 3,500 square feet of usable space. The meeting/event space at 835 Industrial is an example of meeting/event space that meets the criteria set forth in this Section 2.9.2.b. Developer shall make the Event Space available on a first-come, first-served basis for the Community Groups' and City's use at least twelve (12) times per year in the aggregate with rental fees waived. In addition, Developer shall make the Event Space available to the Community Groups and City on a first-come, first-served basis for their use an additional six (6) times per calendar year in the aggregate with rental fees equivalent to those charged to tenants of the Project. In all cases, each Community Group and City shall be responsible for the Event Space operator's reasonable security, setup, and cleanup labor charges, and shall provide commercially reasonable insurance, in connection with the Community Group's or City's rental of the Event Space.

2.9.3. Access to Cafe/Restaurant. The Project will include cafes and/or restaurants to serve Project tenants. Developer shall construct at least one of these cafes or restaurants in a manner that would comply with construction requirements that would be applicable if the café or restaurant were open to the public. Developer shall open to the public at

least one café or restaurant in the Project that will include a seating area and that will be conveniently located to the publicly accessible open spaces in the Project. Such café or restaurant shall be open to the public during at least the hours that the café or restaurant is open to Project tenants and extended hours may be offered to the public if there is market demand for extended hours. Developer must also provide one (1) parking space per 300 square feet of public café or restaurant space in the Project, which parking spaces shall be reserved for use by café or restaurant customers with appropriate signage and may be included in the number of parking spaces provided pursuant to Section 2.9.1.

2.9.4. Privately Owned, Publicly Accessible Campus Areas. Prior to the issuance of a certificate of occupancy for the first building in each Project Phase other than a parking garage, Developer and City will enter into a recordable agreement in substantially the form attached as Exhibit K to memorialize the precise location of, and Developer's obligation to provide public access to and maintain, the privately owned, publicly accessible areas in the applicable Project Phase. From time to time, Developer shall have the right to close public access to some or all of the privately owned, publicly accessible areas for specific campus/tenant events.

2.9.5. Public Restroom. The campus amenity building or another building in the Project shall include a publicly accessible restroom that is located in an area that is conveniently accessible to persons using the Creek Trail and other privately owned, publicly accessible areas in the Project.

2.9.6. Rules and Regulations. Public use of campus parking pursuant to Section 2.9.1 herein, the campus amenity building pursuant to Section 2.9.2 herein, and the privately owned, publicly accessible campus areas pursuant to Section 2.9.4 herein shall be subject to such reasonable rules and regulations as may be adopted and amended by Developer from time to time. Such rules and regulations must be posted online and in the Project in reasonably conspicuous places.

2.9.7. Plumbing for Recycled Water. At the time of issuance of a certificate of occupancy for any building in the Project, the water infrastructure associated with such building shall include dual plumbing for potable and recycled water, with separate pipelines composed of appropriate material to accommodate recycled water. If a recycled water source and associated off-site infrastructure becomes available to connect and deliver recycled water for use at the Property, Developer shall reasonably promptly connect the Project to plumbing infrastructure to such source and associated off-site infrastructure, provided the necessary off-site infrastructure is available at the public street frontage of the Property.

2.9.8. Solar Facilities. Each parking garage in the Project must have solar panels and related equipment installed prior to the issuance of the certificate of occupancy for the parking garage.

2.10. Sales Tax Point of Sale Designation. The Developer shall use good faith, diligent efforts to the extent allowed by law to require all persons and entities providing materials to be used in connection with the construction and development of, or incorporated into, the Project, including by way of illustration but not limitation bulk lumber, concrete, structural steel, roof trusses and other pre-fabricated building components, to (a) obtain a use tax direct payment

permit; (b) elect to obtain a subcontractor permit for the job site of a contract valued at \$5 Million Dollars or more; or (c) otherwise designate the Property as the place of use of material used in the construction of the Project and the place of sale of all fixtures installed in and/or furnished in order to have the local portion of the sales and use tax distributed directly to City instead of through the county-wide pool. Developer shall instruct its general contractor(s) for the Project to, and shall cause such general contractor(s) to instruct its/their subcontractors to, cooperate with City to ensure the local sales/use tax derived from construction of the Project is allocated to City to the fullest extent possible and to the extent allowed by law. This Section 2.10 shall not apply to tenants who perform their own tenant improvement work.

2.10.1. To assist City in its efforts to ensure that such local sales/use tax is so allocated to City, Developer shall on an annual basis, or as frequently as quarterly upon City's written request, provide City with such information as shall be reasonably requested by City regarding subcontractors working on the Project with contracts in excess of the amount set forth above, including a description of all applicable work and materials and the dollar value of such subcontracts, and, if applicable, evidence of their designation, such as approvals or applications for the direct payment permit, of City as the place of use of such work and materials. City may use such information to contact each subcontractor who may qualify for local allocation of use taxes to City. Notwithstanding the foregoing, the failure of any general contractor(s) or subcontractor(s) to allocate sales and use tax revenues as provided herein or to comply with this Section 2.10.1 shall not constitute a breach by Developer under this Development Agreement.

ARTICLE 3. DEVELOPMENT OF THE PROPERTY

3.1. Project Development. Developer shall have a vested right to develop the Project on the Property, in accordance with the Vested Elements (defined in Section 3.2).

3.2. Vested Elements. Except as otherwise explicitly provided in this Agreement, the permitted uses of the Property, the maximum density, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development applicable to the Property are as set forth in:

- a. The General Plan of City on the Agreement Date, including the General Plan Amendments ("**Applicable General Plan**");
- b. The Zoning Ordinance of City on the Agreement Date ("**Applicable Zoning Ordinance**");
- c. Any City modifications to the California Building Code, and any City ordinances that interpret these codes or the City Building Code, on the Agreement Date where such ordinances establish construction standards that are intended to be applied ministerially to the construction of improvements on private property and public infrastructure ("**Applicable Local Building Code Modifications**"), subject to Section 3.4.2(c).

d. Other rules, regulations, ordinances and policies of City applicable to development of the Property on the Agreement Date (collectively, together with the Applicable General Plan and the Applicable Zoning Ordinance, the “**Applicable Rules**”); and

e. The Project Approvals, as they may be amended from time to time upon Developer’s consent (such consent to be granted at the sole discretion of Developer) and City’s approval of the amendment in accordance with Section 6.4.2 of this Development Agreement; and are hereby vested in Developer, subject to, and as provided in, the provisions of this Development Agreement (the “**Vested Elements**”). City hereby agrees to be bound with respect to the Vested Elements, subject to Developer’s compliance with the terms and conditions of this Development Agreement. The intent of this Section 3.2 is to cause all development rights that may be required to develop the Project in accordance with the Project Approvals to be deemed to be “vested rights” as that term is defined under California law applicable to the development of land or property and the right of a public entity to regulate or control such development of land or property, including, without limitation, vested rights in and to building permits and certificates of occupancy.

3.3. Development Construction Completion

3.3.1. Timing of Development; Pardee Finding. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties’ agreement, it is the Parties’ intent to cure that deficiency by acknowledging and providing that Developer shall have the right (without obligation) to develop the Property in a manner consistent with this Development Agreement in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment.

3.3.2. Moratorium. No City-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within City, or portions of City, shall apply to the Property to the extent such moratorium or other limitation is in conflict with this Development Agreement; provided, however, the provisions of this Section shall not affect City’s compliance with moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria or other limitations.

3.3.3. No Other Requirements. Nothing in this Development Agreement is intended to create any affirmative development obligations to develop the Project at all, or in any particular order (except as expressly provided in Section 2.4 herein with regard to the Creek/Trail Improvements and Section 4.3 with respect to removing the Phase I Surface Parking), or liability in Developer under this Development Agreement if the development fails to occur.

3.4. Effect of Project Approvals and Applicable Rules; Future Rules.

3.4.1. Governing Rules. Except as otherwise explicitly provided in this Development Agreement, development of the Property shall be subject to (a) the Project Approvals, and (b) the Applicable Rules.

3.4.2. Changes in Applicable Rules; Future Rules.

a. To the extent any changes in the Applicable Rules, or any provisions of future General Plans, Specific Plans, Zoning Ordinances or other rules, regulations, ordinances or policies (whether adopted by means of ordinance, initiative, referendum, resolution, policy, order, moratorium, or other means, adopted by the City Council, Planning Commission, or any other board, commission, agency, committee, or department of City, or any officer or employee thereof, or by the electorate) of City (collectively, “**Future Rules**”) are not in conflict with the Vested Elements, such Future Rules shall be applicable to the Project. To the extent that Future Rules conflict with the Vested Elements, they shall not apply to the Project and the Vested Elements shall apply to the Project, except as provided in Section 3.4.2(c) herein.

For purposes of this Section 3.4.2(a), the word “**conflict**” means Future Rules that would (i) alter the Vested Elements, or (ii) frustrate in a more than insignificant way the intent or purpose of the Vested Elements in relation to the Project, or (iii) materially increase the cost of performance of, or preclude compliance with, any provision of the Vested Elements, or (iv) delay in a more than insignificant way development of the Project, or (v) limit or restrict the availability of public utilities, services, infrastructure of facilities (for example, but not by way of limitation, water rights, water connection or sewage capacity rights, sewer connections, etc., to the extent subject to City jurisdiction) to the Project, or (vi) impose limits or controls in the rate, timing, phasing or sequencing of development of the Project, or (vii) increase the permitted “Impact Fees” (as defined in Section 3.6.3), other than increases in the traffic Impact Fee to the extent specifically authorized by Section 3.6.3(a), or add new Impact Fees, or (viii) limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in the Project Approvals; or (ix) apply to the Project any Future Rules otherwise allowed by this Development Agreement that is not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites; or (x) require the issuance of additional permits or approvals by the City other than those required by Applicable Rules; (xi) establish, enact, increase, or impose against the Project or Property any fees (including connection fees), taxes (including without limitation general, special and excise taxes), assessments, liens or other monetary obligations (including generating demolition permit fees, encroachment permit and grading permit fees) other than those specifically permitted by this Development Agreement and those imposed by third party utilities; (xii) impose against the Project any condition, dedication or other exaction not specifically authorized by Applicable Rules; or (xiii) limit the processing or procuring of applications and approvals of Subsequent Approvals.

b. To the maximum extent permitted by law, City shall prevent any Future Rules from invalidating or prevailing over all or any part of this Development Agreement, and City shall cooperate with Developer and shall undertake such actions as may be necessary to ensure this Development Agreement remains in full force and effect. City shall not support,

adopt, or enact any Future Rule, or take any other action, that would violate the express provisions or spirit and intent of this Development Agreement or the Project Approvals. Developer reserves the right to challenge in court any Future Rule that would conflict with the Vested Elements or this Development Agreement or reduce the development rights provided by this Development Agreement.

c. A Future Rule that conflicts with the Vested Elements shall nonetheless apply to the Property if, and only if (i) consented to in writing by Developer; (ii) it is determined by City and evidenced through findings adopted by the City Council that the change or provision is reasonably required in order to prevent a condition dangerous to the public health or safety; (iii) required by changes in State or Federal law as set forth in Section 3.4.3 below; (iv) it consists of changes in, or new fees permitted by, Section 3.6; or (v) it is otherwise expressly permitted by this Development Agreement.

d. Prior to the Effective Date, the Parties shall have prepared two (2) sets of the Project Approvals and Applicable Rules, one (1) set for City and one (1) set for Developer. If it becomes necessary in the future to refer to any of the Project Approvals or Applicable Rules, the contents of these sets are presumed for all purposes of this Development Agreement, absent clear clerical error or similar mistake, to constitute the Project Approvals and Applicable Rules.

3.4.3. Changes in State or Federal Laws. In accordance with California Government Code Section 65869.5, in the event that state or federal laws or regulations enacted after the Effective Date (“**State or Federal Law**”) prevent or preclude compliance with one or more provisions of this Development Agreement, the Parties shall meet in good faith to determine the feasibility of any modification or suspension of this Development Agreement that may be necessary to comply with such State or Federal Law and to determine the effect such modification or suspension would have on the purposes and intent of this Development Agreement and the Vested Elements. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such State or Federal Law. In such an event, this Development Agreement together with any required modifications shall continue in full force and effect. In the event that the State or Federal Law operates to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Development Agreement, Developer may terminate this Development Agreement. In addition, Developer shall have the right to challenge (by any method, including litigation) the State or Federal Law preventing compliance with, or performance of, the terms of this Development Agreement and, in the event that such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect, unless the Parties mutually agree otherwise, except that if the Term of this Development Agreement would otherwise terminate during the period of any such challenge and Developer has not commenced with the development of the Project in accordance with this Development Agreement as a result of such challenge, the Term shall be extended for the period of any such challenge.

3.4.4. Expansion of Development Rights. If any Future Rule or State or Federal Law expands, extends, enlarges or broadens Developer’s rights to develop the Project, then, (a) if

such law is mandatory, the provisions of this Development Agreement shall be modified as may be necessary to comply or conform with such new law, provided that such modification shall not relieve Developer of its obligation to provide the Community Benefits to the extent the Community Benefits do not violate applicable law, and (b) if such law is permissive, the provisions of this Development Agreement shall be modified, upon the mutual agreement of Developer and City, as may be desirable to comply with such new law, which modification may include providing additional community benefits. Immediately after enactment of any such new law, upon Developer's request, the Parties shall meet and confer in good faith for a period not exceeding sixty (60) days (unless such period is extended by mutual written consent of the Parties) to prepare such modification. Developer shall have the right to challenge City's refusal to apply any new law mandating expansion of Developer's rights under this Development Agreement, and in the event such challenge is successful, this Development Agreement shall be modified to comply with, or conform to, the new law.

3.4.5. Conflicts. In the event of an irreconcilable conflict between the provisions of the Project Approvals (on the one hand) and the Applicable Rules (on the other hand), the provisions of the Project Approvals shall apply. In the event of a conflict between the Project Approvals (on the one hand) and this Development Agreement, in particular, (on the other hand), the provisions of this Development Agreement shall control.

3.5. Processing Subsequent Approvals.

3.5.1. Processing of Subsequent Approvals. City will accept, make completeness determinations, and use its best efforts to process, promptly and diligently, to completion all applications for Subsequent Approvals for the Project, in good faith and in accordance with the terms of this Development Agreement, including, but not limited to, the following:

- a. the processing of applications for and issuance of all discretionary approvals requiring the exercise of judgment and deliberation by City, including without limitation, the Subsequent Approvals;
- b. the holding of any required public hearings;
- c. the processing of applications for and issuing of all ministerial approvals requiring the determination of conformance with the Applicable Rules, including, without limitation, grading plans, improvement plans, building plans and specifications, and ministerial issuance of one or more final maps, zoning clearances, demolition permits, grading permits, improvement permits, building permits, lot line adjustments, those sign permits that are evaluated and issued at the planning staff level, certificates of use and occupancy and approvals and entitlements and related matters under the jurisdiction of the City (including the San Carlos Municipal Code) as may be necessary for the completion of the development of the Property ("**Ministerial Approvals**").

3.5.2. Scope of Review of Subsequent Approvals. By approving the Project Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety, and general welfare. Accordingly, City shall not use its authority in

considering any application for a discretionary Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise to prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed to be tools to implement those final policy decisions. The scope of the review of applications for Subsequent Approvals shall be limited to a review of substantial conformity with the Vested Elements and the Applicable Rules (except as otherwise provided by Section 3.4), and compliance with CEQA. Where such substantial conformity/compliance exists, City shall not deny an application for a Subsequent Approval for the Project.

3.5.3. Additional Staffing. If standard City staffing fails to result in processing of Subsequent Approvals as promptly as reasonably required by Developer, City shall consider in good faith Developer's request to hire, at Developer's sole expense, plan check, inspection or other personnel or consultants for such actions, or allocate use of exclusively dedicated staff time, such that the reasonable time limits of Developer can be achieved. City shall consult in good faith with Developer as to any additional consultants to be hired pursuant to this Section.

3.6. Development Fees, Exactions; and Conditions.

3.6.1. General. All fees, exactions, dedications, reservations or other impositions to which the Project would be subject, but for this Development Agreement, are referred to in this Development Agreement either as "Processing Fees" (as defined in Section 3.6.2) or "Impact Fees" (as defined in Section 3.6.3). City shall comply with Government Code Section 66006 with respect to any fees it receives or costs it recovers pursuant to this Development Agreement.

3.6.2. Processing Fees. "**Processing Fees**" mean fees charged on a citywide basis to cover the cost of City review of applications for any permit or other review by City departments. Applications for Subsequent Approvals for the Project shall be charged Processing Fees to allow City to recover its actual and reasonable costs of processing Developer's Subsequent Approvals with respect to the Project.

3.6.3. Impact Fees. "**Impact Fees**" means monetary fees, exactions or impositions, other than taxes or assessments, whether established for or imposed upon the Project individually or as part of a class of projects, that are imposed by City on the Project for any purpose, including, without limitation, defraying all or a portion of the cost of public services and/or facilities construction, improvement, operation and maintenance attributable to the burden created by the Project. Any fee, exaction or imposition imposed by City on the Project that is not a Processing Fee is an Impact Fee. No Impact Fees shall be applicable to the Project except as provided in this Development Agreement. City understands that long-term assurances by City concerning Impact Fees were a material consideration for Developer agreeing to develop the Project, to pay the Impact Fees set forth in Exhibit H of this Development Agreement and to provide the Public Benefits described in this Development Agreement.

a. Only the specific Impact Fees listed in Exhibit H shall apply to the Project, except as otherwise explicitly permitted by this Section 3.6.3(a). No change to an Impact Fee in Exhibit H (other than by the inflator, if any, permitted in Exhibit H using the specific index identified herein) resulting in an increase in dollar amounts charged to the Project

that is adopted after the Agreement Date shall apply to the Project. If, after the Agreement Date, City decreases the rate of any of its Impact Fees existing as of the Agreement Date, Developer shall pay the reduced Impact Fee in effect at the time of payment. Notwithstanding the foregoing, the Parties acknowledge and agree that City intends to undertake a new nexus study to support revisions to the traffic Impact Fee codified in Chapter 8.50 of the San Carlos Municipal Code in effect as of the Agreement Date (“**Existing Traffic Impact Fee**”). In the event that City adopts a revised traffic Impact Fee by December 31, 2030 (“**Revised Traffic Impact Fee**”), and the Revised Traffic Impact Fee applicable to office/research and development (“**Office/R&D**”) uses is different than the Existing Traffic Impact Fee applicable to Office/R&D uses, the Project thereafter shall be subject to the Revised Traffic Impact Fee applicable to Office/R&D uses; provided that in no event shall the Revised Traffic Impact Fee applicable to Office/R&D uses in the Project exceed one hundred and fifty percent (150%) of the Existing Traffic Impact Fee applicable to Office/R&D. No revisions to traffic Impact Fees applicable to Office/R&D uses subsequent to the Revised Traffic Impact Fee shall apply to the Project. The traffic Impact Fee for all uses in the Project other than Office/R&D uses shall be the Existing Traffic Impact Fee.

b. Any Impact Fees levied against or applied to the Project must be consistent with the provisions of applicable California law, including the provisions of Government Code Section 66000 *et seq.* (“**AB 1600**”). Developer retains all rights set forth in California Government Code Section 66020. Nothing in this Development Agreement shall diminish or eliminate any of Developer’s rights set forth in such section.

c. City agrees to exclude Developer from any and all collection agreements regarding fees, including, but not limited to, development impact fees, which other public agencies request the City to impose at City’s discretion on the Project or the Property after the Agreement Date through the Term of this Development Agreement.

3.6.4. Conditions of Subsequent Approvals.

a. In connection with any Subsequent Approvals, City shall have the right to impose reasonable conditions including, without limitation, normal and customary dedications for easements for public access, utilities, water, sewers, and drainage necessary for the Project; provided, however, such conditions and dedications shall not be inconsistent with the Applicable Rules or Project Approvals, nor inconsistent with the development of the Project as contemplated by this Development Agreement. Developer may protest any conditions, dedications, or fees while continuing to develop the Property; such a protest by Developer shall not delay or stop the issuance of building permits or certificates of occupancy.

b. With the exception of mitigation measures imposed pursuant to any required CEQA analysis of Subsequent Approvals, no conditions imposed on Subsequent Approvals shall require dedications or reservations for, or construction or funding of, public infrastructure or public improvements beyond those already included in the MMRP. In addition, any and all conditions imposed on Subsequent Approvals for the Project must comply with Sections 3.6.2 and 3.6.3 herein.

3.6.5. Infrastructure Phasing Flexibility. Notwithstanding the provisions of any phasing requirements in the Project Approvals, Developer and City recognize that economic and

market conditions may necessitate changing the order in which the infrastructure to serve the Project is constructed. Therefore, City and Developer hereby agree that should Developer determine that it is necessary or desirable to develop any portion of the Project's infrastructure in an order that differs from the order set forth in the Project Approvals, Developer and City shall collaborate and City shall permit any modification requested by Developer so long as the modification continues to ensure adequate infrastructure is available to serve that portion of the Project being developed.

3.6.6. Infrastructure Capacity. Subject to Developer's installation of infrastructure in accordance with the requirements of the Project Approvals, City hereby acknowledges that to the extent the City provides infrastructure or services it will have, and shall reserve, sufficient capacity in its infrastructure, services and utility systems, including, without limitation, traffic circulation, storm drainage, flood control, electric service, sewer collection, sewer treatment, and sanitation service, as and when necessary to serve the Project as it is developed. To the extent that City renders such services or provides such utilities, City hereby agrees that it will serve the Project and that there shall be no restriction on hookups or service for the Project, except for reasons beyond City's control

3.6.7. Subsequent Projects. While City may approve other projects after the Agreement Date that place a burden on City's infrastructure, City agrees that Developer's right to build and occupy the Project, as set forth in the Project Approvals, shall not be diminished as a result of such other projects and that Developer's cost to develop the Project shall not be increased as a result of such other projects, except for reasons beyond City's control.

3.6.8. Availability of Public Services. To the maximum extent permitted by law and consistent with its authority, City shall assist Developer in reserving such capacity for sewer and water services as may be necessary to serve the Project during the Term, at a cost to be applied uniformly without discrimination as to user or use.

3.7. Taxes, Assessment Districts, or Other Funding Mechanisms. The Parties understand and agree that as of the Effective Date there are no City assessments applicable to the Property. City is unaware of any pending efforts to initiate or consider applications for new or increased assessments covering the Property, or any portion thereof. City understands that long-term assurances by City concerning fees, taxes and assessments were a material consideration for Developer agreeing to process the siting of the Project in its present location and to pay long-term fees, taxes and assessments described in this Development Agreement. City shall retain the ability to initiate or process applications for the formation of new assessment districts covering all or any portion of the Property. Subject to the provisions of Section 3.6 above, City may impose new taxes and assessments, other than Impact Fees, on the Property in accordance with the then-applicable laws, but only if such taxes or assessments are (i) (a) adopted by or after voter or landowner approval, either City-wide or throughout the plan area boundary of the Vision Plan, of such taxes or assessments and are equally imposed on other land and projects of the same category (i.e., all office/research and development projects or retail projects) within the jurisdiction of City or throughout the plan area boundary of the Vision Plan, or (b) adopted for the purposes of funding a transportation management association to serve the Vision Plan area initially, and the expanded areas contemplated in the bylaws of the TMA ("**TMA District**") by or after TMA District-wide voter or TMA District-wide landowner

approval of such taxes or assessments and (i) such taxes or assessments are equally imposed on other land and projects of the same category (i.e., all office/research and development projects or retail projects) within the jurisdiction of the TMA District, and (ii) as to assessments, the impact thereof does not fall disproportionately on the Property vis-à-vis the other land and projects within City's jurisdiction or the portion of City's jurisdiction subject to the assessment. Nothing herein shall be construed so as to limit Developer from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property. In the event an assessment district is lawfully formed to provide funding for services, improvements, maintenance or facilities which are substantially the same as those services, improvements, maintenance or facilities being funded by the fees or assessments to be paid by Developer under the Project Approvals or this Development Agreement, such fees or assessments to be paid by Developer shall be subject to reduction/credit in an amount equal to Developer's new or increased assessment under the assessment district. Alternatively, the new assessment district shall reduce/credit Developer's new assessment in an amount equal to such fees or assessments to be paid by Developer under the Project Approvals or this Development Agreement.

3.8. Life of Project Approvals and Subdivision Maps.

3.8.1. Life of Subdivision Maps. The terms of any subdivision or parcel map for the Property, any amendment or reconfiguration thereto, or any subsequent tentative map, shall be automatically extended such that such tentative maps remain in effect for a period of time coterminous with the term of this Development Agreement.

3.8.2. Life of Other Project Approvals. The term of all other Project Approvals shall be automatically extended such that these Project Approvals remain in effect for a period of time at least as long as the term of this Development Agreement.

3.8.3. Termination of Agreement. In the event that this Development Agreement is terminated prior to the expiration of the Term, the term of any subdivision or parcel map or any other Project Approval and the vesting period for any final subdivision map approved as a Project Approval shall be the term otherwise applicable to the approval, which shall commence to run on the date that the termination of this Development Agreement takes effect (including any extensions).

3.9. Further CEQA Environmental Review.

3.9.1. Reliance on Project EIR. The EIR, which has been certified by City as being in compliance with CEQA, addresses the potential environmental impacts of the entire Project as it is described in the Project Approvals. In acting on any discretionary Subsequent Approvals for the Project, City will rely on the EIR to satisfy the requirements of CEQA to the fullest extent permissible by CEQA and City will not require a new initial study, negative declaration, or subsequent or supplemental EIR unless required by CEQA and will not impose on the Project any mitigation measures or other conditions of approval other than those specifically imposed by the Project Approvals and the MMRP or specifically required by the Applicable Rules or by CEQA.

3.9.2. Subsequent CEQA Review. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Approval for the Project, then the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Approval, and the City shall conduct such CEQA review as expeditiously as possible.

3.10. Developer's Right to Rebuild. Developer may renovate or rebuild the Project within the Term of this Development Agreement should it become necessary due to natural disaster, changes in seismic requirements, or should the buildings located within the Project become functionally outdated, within Developer's sole discretion, due to changes in technology. Any such renovation or rebuilding shall be subject to the Vested Elements, shall comply with the Project Approvals, the Applicable Rules, and the requirements of CEQA.

ARTICLE 4. ADDITIONAL RIGHTS AND OBLIGATIONS OF THE PARTIES

4.1. Conveyance of Public Infrastructure. Upon completion of any and all public infrastructure to be completed by Developer, Developer shall offer for dedication to City from time to time as such public infrastructure is completed, and City shall promptly accept from Developer the completed public infrastructure (and release to Developer any bonds or other security posted in connection with performance thereof in accordance with the terms of such bonds), and thereafter City shall maintain the public infrastructure. Developer may offer dedication of public infrastructure in phases and the City shall not refuse to accept such phased dedications or refuse phased releases of bonds or other security so long as all other conditions for acceptance, including meeting City specifications applicable to such infrastructure, have been satisfied.

4.2. Reimbursement. Nothing in this Development Agreement precludes City and Developer from entering into any reimbursement agreements for the portion (if any) of the cost of any dedications, public facilities and/or infrastructure that City may require as conditions of the Project Approvals to the extent that they are in excess of those reasonably necessary to mitigate the impacts of or offset the burdens posed by the Project.

4.3. Surface Parking Lot. The surface parking lot proposed as part of Phase I of the Project ("**Phase I Surface Parking**") shall be permitted for the Term of this Development Agreement but shall not be used for parking after a parking garage to satisfy applicable Phase I parking requirements is constructed and operable. The terms of this Section 4.3 shall survive the expiration or earlier termination of this Development Agreement.

4.3.1. On or before the fourteenth (14th) anniversary of the Effective Date, Developer shall notify City that Developer intends to (a) replace the Phase I Surface Parking with the Phase III buildings in accordance with the PD Plan; (b) submit an application to amend the PD Plan to construct a parking garage to satisfy applicable Phase I parking requirements if such requirements have not then been satisfied and to amend the PD Plan and any other applications for entitlements necessary to develop the Phase I Surface Parking as an alternate use; or (c) submit an application to amend the PD Plan and any other applications for entitlements necessary to develop the Phase I Surface Parking as an alternate use if the Phase I

parking requirements have then been satisfied. City shall review any applications described in clause (b) and (c) in accordance with Section 3.5 of this Agreement. If Developer has both (a) notified City it intends to submit any applications described in clause (b) and (c) or failed to send the notice described in Section 4.3, and (b) failed to submit applications for entitlements as described in clause (b) and (c) within three (3) months after the fourteenth (14th) anniversary of the Effective Date, then Developer shall submit to City for approval by the Zoning Administrator a landscaping plan proposing to install landscaping consistent with the provisions of the then-current San Carlos Municipal Code in place of the Phase I Surface Parking.

4.3.2. Prior to the expiration of the Term, Developer (a) shall use good faith efforts to obtain all entitlements and building permits necessary to replace the Phase I Surface Parking with the Phase III buildings in accordance with the PD Plan, or construct a parking garage if needed to serve Phase I as authorized by the amended PD Plan and the alternate use authorized by the amended PD Plan in place of the Phase I Surface Parking, and (b) provided Developer has obtained such entitlements and permits, shall begin to mobilize labor and equipment on the Property to allow for construction of such facilities. Thereafter, Developer shall diligently undertake construction of such facilities.

4.3.3. If prior to the expiration of the Term, Developer has not obtained all entitlements, building permits, and mobilized labor and equipment to replace the Phase I Surface Parking with the Phase III buildings in accordance with the PD Plan or construct a parking garage if needed to serve Phase I as authorized by the amended PD Plan and the alternate use authorized by the amended PD Plan in place of the Phase I Surface Parking, Developer shall within two (2) months after the expiration of the Term submit to City for approval by the Zoning Administrator a landscaping plan consistent with the requirements of Section 4.3.1 (unless Developer has already done so in accordance with Section 4.3.1) and within six (6) months after expiration of the Term remove the asphalt comprising the Phase I Surface Parking and replace the asphalt with landscaping in accordance with the approved landscaping plan. For the avoidance of doubt, Developer may fence the area to be improved with landscaping following the removal of the Phase I Surface Parking asphalt and retain such security personnel as Developer deems necessary in its sole discretion to exclude the public from such area.

ARTICLE 5. ANNUAL REVIEW

5.1. Annual Review. The annual review required by California Government Code Section 65865.1 and Section 18.37.80 of the San Carlos Municipal Code shall be conducted for the purposes and in the manner stated in those laws as further provided herein. The procedure set forth in this Article shall be used by Developer and City in complying with the annual review requirement. The City and Developer agree that the annual review process shall review compliance by Developer with the obligations under this Development Agreement but shall not review compliance with other Project Approvals.

5.2. Developer Compliance Letter. No later than the last business day of January of each year, Developer shall submit a letter to the Community Development Director (“**Director**”) demonstrating Developer’s good faith compliance with the material terms and conditions of this

Development Agreement and shall include in the letter a statement that the letter is being submitted to City pursuant to the requirements of Government Code Section 65865.1.

5.3. Director Review. Within thirty (30) days after the receipt of Developer's letter pursuant to Section 5.2, the Director shall review Developer's submission and determine on the basis of substantial evidence whether Developer has, for the year under review, demonstrated good faith compliance with the material terms and conditions of this Development Agreement.

5.3.1. Director Compliance Finding. If the Director finds that Developer has so complied, the Director shall issue and deliver to Developer a written "**Finding of Compliance**" in recordable form containing the Director's finding that Developer is in good faith compliance with the material terms and conditions of this Development Agreement for the year under review. The Finding of Compliance may be recorded at the Director's or Developer's discretion.

5.3.2. Director Noncompliance Finding. If the Director (or the City Council on appeal pursuant to Section 5.5) finds that there is substantial evidence that Developer has not complied in good faith with the material terms and conditions of this Development Agreement and that Developer is in material breach of this Development Agreement for the year under review, the Director shall issue and deliver to Developer a written "**Finding of Noncompliance**" specifying in detail the nature of the failures in performance that the Director (or City Council on appeal) claims constitutes material noncompliance, all facts demonstrating substantial evidence of material noncompliance, and the manner in which such noncompliance may be satisfactorily cured in accordance with the Development Agreement. The Director shall grant a reasonable period of time for Developer to cure the alleged noncompliance. The Director shall grant a cure period of at least sixty (60) days and shall consider in good faith a request from Developer that City extend the sixty (60) day period if Developer is proceeding in good faith to cure the noncompliance and additional time is reasonably needed. At the conclusion of the cure period, the Director shall either (i) find that Developer is in compliance in accordance with Section 5.3.1; or (ii) find that Developer is not in compliance and the Parties may terminate or modify the Development Agreement by mutual consent pursuant to Government Code Sections 65867 and 65868 and City Regulations (or Section 6.4.2, in the case of a modification that meets the criteria of Section 6.4.2) or the Director may refer the matter to City Council as specified in Section 5.4. In the event that the Finding of Noncompliance is disputed by the Parties or is an Event of Default pursuant to Article 7 herein, the Parties shall be entitled to their respective rights and obligations under both Articles 5 and 7 herein, except that the entity allegedly in default shall be accorded only one of the sixty (60)-day cure periods referred to in Sections 5.3.2 and 7.1 herein. A Finding of Noncompliance may be recorded after it becomes final as determined by Section 5.6, provided that in the event City subsequently determines Developer to be in compliance, City shall issue and record a subsequent Finding of Compliance indicating that the prior Finding of Noncompliance has been cured.

5.4. Appeal or Referral to City Council.

5.4.1. Referral. If Developer fails to cure any alleged noncompliance to the Director's reasonable satisfaction during the prescribed cure period and any extensions thereto, the Director may refer the alleged noncompliance to the City Council for consideration of termination or modification of the Development Agreement in accordance with Government

Code Sections 65865.1, the City Development Agreement Regulations, and this Development Agreement.

5.4.2. Appeal. Within seven (7) days after the Director's issuance of a Finding of Compliance or a Finding of Noncompliance, any interested person may file a written appeal of the finding with the City Council. The appellant shall specify in writing the reasons for the appeal.

5.5. Appeal Hearings. The City Council shall hold a public hearing regarding any referral of noncompliance pursuant to Section 5.4.1 or any appeal pursuant to Section 5.4.2. City shall deliver notice of the hearing to Developer by certified mail containing: (i) the time and place of the City Council hearings; (ii) a statement as to whether City proposes to terminate or modify this Development Agreement and the terms of any proposed modification; and (iii) any other information reasonably necessary to inform Developer of the nature of the proceedings. At least three business (3) days prior to the hearing, City shall deliver to Developer all staff reports and all other relevant documents pertaining to the hearings. At the time of the hearings, Developer shall be given an opportunity to be heard. After the public hearings, the City Council may uphold, rescind, or modify the Director's findings and issue a Finding of Compliance or a Finding of Noncompliance. In the event the City Council upholds or issues a Finding of Noncompliance, subject to the notice requirements of this section, the City Council may modify or terminate this Development Agreement, provided that any such modification or termination shall bear a reasonable nexus to, and be proportional in severity to the magnitude of, the alleged noncompliance, and in no event shall termination be permitted except in accordance with Article 7 herein.

5.6. Final Determination. The issuance of a Finding of Compliance by the Director and the expiration of the appeal period without appeal, or the confirmation by the City Council of the Finding of Compliance on such appeal, shall conclude the review for the applicable period and such determination shall be final. At Developer's request, City shall issue and have recorded a Certificate of Compliance indicating Developer's compliance with the terms of this Development Agreement. The issuance of a Finding of Noncompliance by the City Council shall conclude the review for the applicable period and such determination shall be final.

5.7. Relationship to Default Provisions. The above procedures shall supplement and shall not replace that provision of Section 7.1 of this Development Agreement whereby either City or Developer may, at any time, assert matters which either Party believes have not been undertaken in accordance with this Development Agreement by delivering a written Notice of Default and following the procedures set forth in said Section 7.1. Notwithstanding the foregoing, following the issuance of any Finding of Noncompliance and expiration of the appeal period without appeal, or following any City Council hearing upholding any Finding of Noncompliance without any timely legal challenge, City need not issue any Notice of Default or allow any further opportunity to cure pursuant to Article 7 and may proceed to terminate this Development Agreement according to the procedures set forth in Article 7.

ARTICLE 6. AMENDMENTS

6.1. Amendments to Development Agreement Legislation. This Development Agreement has been entered into in reliance upon the provisions of the Development Agreement Legislation as those provisions existed at the Agreement Date. No amendment or addition to those provisions or any other federal or state law and regulation that would materially adversely affect the interpretation or enforceability of this Development Agreement or would prevent or preclude compliance with one or more provisions of this Development Agreement shall be applicable to this Development Agreement unless such amendment or addition is specifically required by the change in law or is mandated by a court of competent jurisdiction. In the event of the application of such a change in law, the Parties shall meet in good faith to determine the feasibility of any modification or suspension that may be necessary to comply with such new law or regulation and to determine the effect such modification or suspension would have on the purposes and intent of this Development Agreement and the Vested Elements. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended but only to the minimum extent necessary to comply with such new law or regulation. If such amendment or change is permissive (as opposed to mandatory), this Development Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this Development Agreement to permit such applicability. Developer and/or City shall have the right to challenge any new law or regulation preventing compliance with the terms of this Development Agreement, and in the event such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect. The Term of this Development Agreement shall be extended for the duration of the period during which such new law or regulation precludes compliance with the provisions of this Development Agreement, provided that no such extension of the Term shall exceed four (4) years, unless City Council grants further extensions in its discretion.

6.2. Amendments to or Cancellation of Development Agreement. This Development Agreement may be amended from time to time or canceled in whole or in part by mutual consent of both Parties in writing in accordance with the provisions of the Development Agreement Legislation and the City Development Agreement Regulations. Review and approval of an amendment to this Development Agreement shall be strictly limited to consideration of only those provisions to be added or modified. No amendment, modification, waiver, or change to this Development Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing that expressly refers to this Development Agreement and signed by the duly authorized representatives of both Parties. All amendments to this Development Agreement shall automatically become part of the Project Approvals.

6.3. Operating Memoranda. The provisions of this Development Agreement require a close degree of cooperation between City and Developer and development of the Property hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the term of this Development Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer shall effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto as

addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by City and Developer. No such operating memoranda shall constitute an amendment to this Development Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section 6.3 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 6.2 above. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City.

6.4. Amendments to Project Approvals. Notwithstanding any other provision of this Development Agreement, Developer may seek, and City may review and grant, amendments or modifications to the Project Approvals subject to the following (except that the procedures for amendment of this Development Agreement are set forth in Section 6.2 herein).

6.4.1. Amendments to Project Approvals. Project Approvals (except for this Development Agreement, the amendment process for which is set forth in Section 6.2) may be amended or modified from time to time, but only at the written request of Developer or with the written consent of Developer (at its sole discretion) and in accordance with Section 3.4. All amendments to the Project Approvals shall automatically become part of the Project Approvals. The permitted uses of the Property, the maximum density, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development as set forth in all such amendments shall be automatically vested pursuant to this Development Agreement, without requiring an amendment to this Development Agreement. Amendments to the Project Approvals shall be governed by the Project Approvals and the Applicable Rules, subject to Section 3.4. The City shall not request, process or consent to any amendment to the Project Approvals that would affect the Property or the Project without Developer's prior written consent.

6.4.2. Administrative Amendments. Upon the request of Developer for an amendment or modification of any Project Approval, the Director or his/her designee shall determine: (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (b) whether the requested amendment or modification substantially conforms with the material terms of this Development Agreement and the Applicable Rules. If the Director or his/her designee finds that the requested amendment or modification is both minor and substantially conforms with the material terms of this Development Agreement and the Applicable Rules, the amendment or modification shall be determined to be an "**Administrative Amendment**," and the Director or his/her designee may approve the Administrative Amendment, without public notice or a public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, variations in the location of structures that do not substantially alter the design concepts of the Project, substitution of comparable landscaping for any landscaping shown on any development plan or landscape plan, variations in the location or installation of utilities and other infrastructure connections and facilities that do not substantially alter design concepts of the Project, amendments to the master sign program for the Project, and

minor adjustments to a subdivision map or the Property legal description shall be deemed to be minor amendments or modifications. Any request of Developer for an amendment or modification to a Project Approval that is determined not to be an Administrative Amendment as set forth above shall be subject to review, consideration, and action pursuant to the Applicable Rules and this Development Agreement.

ARTICLE 7. DEFAULT, REMEDIES AND TERMINATION

7.1. Events of Default. Subject to any extensions of time by mutual consent of the Parties in writing, and subject to the provisions of Section 11.2 hereof regarding permitted delays and a Mortgagee's right to cure pursuant to Section 10.3 hereof, any failure by either Party to perform any material term or provision of this Development Agreement (not including any failure by Developer to perform any term or provision of any other Project Approvals) shall constitute an "**Event of Default**," (i) if such defaulting Party does not cure such failure within sixty (60) days (or within the sixty (60) day cure period under Section 5.3.2, if Section 5.3.3 is applicable) following written notice of default ("**Notice of Default**") from the other Party, where such failure is of a nature that can be cured within such sixty (60) day period, or (ii) if such failure is not of a nature that can be cured within such sixty (60) day period, the defaulting Party does not within such sixty (60) day period (or the sixty (60) day cure period under Section 5.3.2, if section 5.3.2 is applicable) commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure. Any Notice of Default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Event of Default, all facts constituting substantial evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Development Agreement. During the time periods herein specified for cure of a failure of performance, the Party shall not be considered to be in default for purposes of (a) termination of this Development Agreement, (b) institution of legal proceedings with respect thereto, or (c) issuance of any approval with respect to the Project. This Development Agreement shall also not be terminated if a Finding of Noncompliance has been issued during the annual review process set forth in Article 5 and time remains for Developer to cure or if an appeal of the Finding of Noncompliance is pending. The waiver by either Party of any default under this Development Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Development Agreement.

7.2. Meet and Confer. During the time periods specified in Section 7.1 for cure of a failure of performance, the Parties shall meet and confer in a timely and responsive manner, to attempt to resolve any matters prior to litigation or other action being taken, including without limitation any action in law or equity; provided, however, nothing herein shall be construed to extend the time period for this meet and confer obligation beyond the sixty (60)-day cure period referred to in Section 7.1 (even if the sixty (60)-day cure period itself is extended pursuant to Section 7.1(ii) or 5.3.2) unless the Parties agree otherwise in writing.

7.3. Remedies and Termination. If, after notice and expiration of the cure periods and procedures set forth in Sections 7.1 and 7.2, the alleged Event of Default is not cured, the non-defaulting Party, at its option, may institute legal or judicial reference proceedings, as

applicable, pursuant to Section 7.4 or 7.6 of this Development Agreement and/or terminate this Development Agreement pursuant to Section 7.7 herein. In the event that this Development Agreement is terminated pursuant to Section 7.7 herein and litigation or judicial reference, as applicable, is instituted that results in a final decision that such termination was improper, then this Development Agreement shall immediately be reinstated as though it had never been terminated.

7.4. Legal Action by Parties.

7.4.1. Remedies. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto or to obtain any remedies consistent with the purpose of this Development Agreement. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy. Without limiting the foregoing, Developer reserves the right to challenge in court any Future Rules that would conflict with the Vested Elements or the Subsequent Approvals for the Project or reduce the development rights provided by the Project Approvals.

7.4.2. No Damages. In no event shall either Party, or its boards, commissions, officers, agents or employees, be liable in damages for any default under this Development Agreement, it being expressly understood and agreed that the sole legal remedy available to either Party for a breach or violation of this Development Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Development Agreement by the other Party, or to terminate this Development Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Development Agreement including, but not limited to obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Development Agreement by the other Party.

7.5. Effects of Litigation. In the event that litigation is timely instituted, and a final judgment is obtained, which invalidates in its entirety this Development Agreement, then Developer shall have no obligations whatsoever under this Development Agreement. In the event that any payment(s) have been made by or on behalf of Developer to City pursuant to the obligations contained in Section 3.6, City shall give to Developer a refund of the monies remaining in any segregated City account into which such payment(s) were deposited, if any, along with interest which has accrued, if any. To the extent the payment(s) made by or on behalf of Developer were not deposited, or no longer are, in the segregated City account, City shall give

Developer a credit for the amount of said payment(s) as determined pursuant to this Section 7.5, along with interest, if any, that has accrued, which credit may be applied by Developer to any costs or fees imposed by City on Developer in connection with construction or development within or outside the Property. Developer shall be entitled to use all or any portion of the credit at its own discretion until such time as the credit has been depleted. Any credits due to Developer pursuant to this Section 7.5 may, at Developer's own discretion, be transferred by Developer to a third party for application by said third party to any costs or fees imposed by City on the third party in connection with construction or the development of property within City, whether or not related to the Project. In the event that Developer has already developed or is developing a portion of the Project at the time of any invalidation of the Development Agreement, then any such refund or credit shall be limited to the amount paid by Developer that exceeds, on a pro rata basis, the proportion and uses of the Property retained by Developer to the entire Property. This Section 7.5 shall survive the termination or expiration of this Development Agreement.

7.6. Judicial Reference. Pursuant to Code of Civil Procedure Section 638, et seq., any legal actions with regard to the modification or termination of this Development Agreement pursuant to Section 5.6, 7.3, or 7.7.3 herein shall be heard by a referee who shall be a retired judge from either the San Mateo County Superior Court, the California Court of Appeal, the United States District Court or the United States Court of Appeals, provided that the selected referee shall have experience in resolving land use and real property disputes. Developer and City shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before such referee. If Developer and City are unable to agree on a referee within ten (10) days of a written request to do so by either Party hereto, either Party may seek to have one appointed pursuant to Code of Civil Procedure Section 640. The cost of such proceeding shall initially be borne equally by the Parties. Any referee selected pursuant to this Section 7.6 shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution. Notwithstanding the provisions of this Section 7.6, either Party shall be entitled to seek declaratory and injunctive relief in any court of competent jurisdiction to enforce the terms of this Development Agreement, or to enjoin the other Party from an asserted breach thereof, pending the selection of a referee as provided in this Section 7.6, on a showing that the moving party would otherwise suffer irreparable harm. Upon the mutual agreement by both Parties, any legal action shall be submitted to non-binding arbitration in accordance with rules to be mutually agreed upon by the Parties.

7.7. Termination.

7.7.1. Expiration of Term. Except as otherwise provided in this Development Agreement, this Development Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Development Agreement as set forth in Section 1.3.

7.7.2. Survival of Obligations. Upon the termination or expiration of this Development Agreement as provided herein, neither Party shall have any further right or obligation with respect to the Property under this Development Agreement except with respect to any obligation that is specifically set forth as surviving the termination or expiration of this Development Agreement. The termination or expiration of this Development Agreement shall

not affect the validity of the Project Approvals (other than this Development Agreement) for the Project.

7.7.3. Termination by City. Notwithstanding any other provision of this Development Agreement, City shall not have the right to terminate this Development Agreement with respect to all or any portion of the Property before the expiration of its Term unless City complies with all termination procedures set forth in the Development Agreement Legislation and there is an alleged Event of Default by Developer and such Event of Default is not cured pursuant to Article 5 herein or this Article 7 and Developer has first been afforded an opportunity to be heard regarding the alleged default before the City Council and this Development Agreement is terminated only with respect to that portion of the Property to which the default applies. Compliance with the procedures set forth in Sections 7.1 through 7.3 and 7.7.3 shall be deemed full compliance with the requirements of the California Claims Act (Government Code Section 900 *et seq.*) including, but not limited to, the notice of an event of default hereunder constituting full compliance with the requirements of Government Code Section 910.

ARTICLE 8. COOPERATION AND IMPLEMENTATION

8.1. Further Actions and Instruments. Each Party to this Development Agreement shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this Development Agreement, subject to satisfaction of the conditions of this Development Agreement. Upon the request of any Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Development Agreement to carry out the intent and to fulfill the provisions of this Development Agreement or to evidence or consummate the transactions contemplated by this Development Agreement.

8.2. Regulation by Other Public Agencies. Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Development Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Development Agreement in all respects when dealing with any such agency regarding the Property. To the extent that City, the City Council, the Planning Commission or any other board, agency, committee, department or commission of City constitutes and sits as any other board, agency, commission, committee, or department, it shall not take any action that conflicts with City's obligations under this Development Agreement.

8.3. Other Governmental Permits and Approvals; Grants. Developer shall apply in a timely manner in accordance with Developer's construction schedule for the permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. Developer shall comply with all such permits, requirements, and approvals. City shall cooperate with Developer in its endeavors to obtain (a) such permits and approvals and shall, from time to time, at the request of Developer, attempt with due diligence and in good faith to enter into binding agreements with any such entity to ensure the availability of such permits and approvals,

or services, at each stage of the development of the Project; and (b) any grants for the Project for which Developer applies. To the extent allowed by applicable laws, Developer shall be a party or third-party beneficiary to any such agreement between City and such agencies and shall be entitled to enforce the rights of Developer or City thereunder and/or the duties and obligations of the parties thereto. Without limiting the generality of the foregoing, City shall cooperate with Developer in securing all approvals from the Peninsula Joint Powers Board necessary or appropriate for Developer to construct the improvements proposed as part of the Project to the existing pedestrian tunnel from Old County Road to the Caltrain station.

8.4. Cooperation in the Event of Legal Challenge.

8.4.1. The filing of any third-party lawsuit(s) against City or Developer relating to this Development Agreement, the Project Approvals, or other development issues affecting the Property shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Approvals, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order, without the prior written consent of Developer.

8.4.2. In the event of any administrative, legal, or equitable action instituted by a third party challenging the validity of any provision of this Development Agreement, the procedures leading to its adoption, or the Project Approvals for the Project, Developer and City each shall have the right, in its sole discretion, to elect whether or not to defend such action.

a. If both Parties elect to defend, the provisions of this Section 8.4.2.a shall apply. The Parties hereby agree to affirmatively cooperate in defending said action and to execute a joint defense and confidentiality agreement in order to share and protect information, under the joint defense privilege recognized under applicable law. As part of the cooperation in defending an action, City and Developer shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information. Developer and City shall each have sole discretion to terminate its defense at any time. Developer shall be responsible for the reasonable costs of City's independent defense counsel and Developer shall reimburse City, within thirty (30) days following City's written demand therefor, which may be made from time to time during the course of any action described in this Section 8.4.2, including City's reasonable administrative, legal, and court costs and City Attorney oversight expenses. In any case, Developer shall indemnify, defend, and hold harmless the City from and against all damages, attorneys' fees and costs in accordance with this Section 8.2, awarded against City by way of settlement, judgement, or stipulation.

b. If Developer elects not to defend or elects to terminate its defense pursuant to Section 8.4.2.a, Developer shall give written notice to City of its election not to defend/termination of its defense, and the Project Approvals shall terminate and have no further force and effect, except for provisions of this Development Agreement that expressly survive termination. Developer shall have no further obligations under this Section following termination, other than to reimburse City for costs incurred pursuant to Section 8.4.2.a prior to Developer's notice of termination.

c. The City shall not settle any third-party litigation of Project Approvals without Developer's consent, which consent shall not be unreasonably withheld, conditioned, or delayed. If the terms of the proposed settlement would require an amendment to the Project Approvals, such amendment shall not become effective unless and until approved by City in accordance with the Applicable Rules.

d. The terms of this Section shall survive any termination of the Development Agreement.

8.5. Revision to Project. In the event of a court order issued as a result of a successful legal challenge, City shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Project Approvals and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Vested Elements, or (ii) any conflict with the Vested Elements or frustration of the intent or purpose of the Vested Elements.

8.6. State, Federal, or Case Law. Where any state, federal or case law allows City to exercise any discretion or take any act with respect to that law, City shall, in an expeditious and timely manner, at the earliest possible time, (a) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Development Agreement and (b) take such other actions as may be necessary to carry out in good faith the terms of this Development Agreement.

8.7. Defense of Agreement. City shall take all actions that are necessary or advisable to uphold the validity and enforceability of this Development Agreement, subject to Section 8.4.2. If this Development Agreement is adjudicated or determined to be invalid or unenforceable, City agrees, subject to all legal requirements, to consider modifications to this Development Agreement to render it valid and enforceable to the extent permitted by applicable law.

8.8. Encroachment Permits. City shall cooperate with Developer in granting any necessary encroachment permits for construction in the public right-of-way required to construct the Project, including any required off-site improvements.

ARTICLE 9. TRANSFERS AND ASSIGNMENTS

9.1. Right to Assign. Developer shall have the right to sell, assign or transfer ("**Transfer**") in whole or in part its rights, duties and obligations under this Development Agreement to any person or entity at any time during the Term of this Development Agreement in accordance with this Article 9; provided, however, in no event shall the rights, duties and obligations conferred upon Developer pursuant to this Development Agreement be at any time so Transferred except through a transfer of the Property. Developer shall seek City's prior written consent to any Transfer, which consent shall not be unreasonably withheld, conditioned, or delayed. Failure by City to respond within forty-five (45) days to any request made by Developer for such consent shall not be deemed to be City's approval of the Transfer in question, provided that if Developer provides City a second notice, City's failure to respond to that second

notice within fifteen (15) days shall be deemed City's approval of the Transfer. City may refuse to give its consent only if, in light of the proposed transferee's reputation and financial resources, such transferee would not in City's reasonable opinion be able to perform the obligations proposed to be assumed by such transferee. Such determination shall be made by the City Manager and is appealable by Developer to the City Council. In the event of a transfer of a portion of the Property, Developer shall have the right to Transfer its rights, duties and obligations under this Development Agreement that are applicable to the transferred portion, and to retain all rights, duties, and obligations applicable to the retained portions of the Property. Upon Developer's request, City shall cooperate with Developer and any proposed transferee to allocate rights, duties and obligations under this Development Agreement and the Project Approvals among the transferred Property and the retained Property.

9.2. Release upon Transfer. Upon the Transfer of Developer's rights and interests under this Development Agreement pursuant to Section 9.1, Developer shall automatically be released from its obligations and liabilities under this Development Agreement with respect to that portion of the Property transferred, and any subsequent default or breach with respect to the Transferred rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Development Agreement, provided that (i) Developer has provided to City written notice of such Transfer, and (ii) the transferee executes and delivers to City a written agreement in which (a) the name and address of the transferee is set forth and (b) the transferee expressly and unconditionally assumes all of the obligations of Developer under this Development Agreement with respect to that portion of the Property transferred, as shall be identified in the recordable written agreement described herein and which written agreement shall be in substantially the form attached hereto as Exhibit I. Upon Developer's request, City shall cooperate with Developer and any proposed transferee to identify completed obligations and allocate rights, duties and obligations under this Development Agreement and the Project Approvals among the transferred Property and the retained Property. Upon any transfer of any portion of the Property and the express assumption of Developer's obligations under this Development Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Development Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Developer's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferor and the transferee shall each be solely responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferor/transferee, and any amendment to this Development Agreement between City and a transferor or a transferee shall only affect the portion of the Property owned by such transferor or transferee. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 9.3 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Development Agreement.

9.3. Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Development Agreement shall be binding upon the Parties and their respective successors (by merger, reorganization, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all of the persons or entities acquiring the Property or any portion thereof, or any interest therein,

whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Development Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder (i) is for the benefit of such Property and is a burden upon such Property, (ii) runs with such Property, (iii) is binding upon each Party and each successive owner during its ownership of such Property or any portion thereof, and (iv) each person or entity having any interest therein derived in any manner through any owner of such Property, or any portion thereof, and shall benefit the Property hereunder, and each other person or entity succeeding to an interest in such Property.

ARTICLE 10. MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE

10.1. Mortgagee Protection. This Development Agreement shall not prevent or limit Developer in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property ("**Mortgage**"). This Development Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording this Development Agreement, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Development Agreement shall be binding upon and effective against and inure to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

10.2. Mortgagee Not Obligated. Notwithstanding the provisions of Section 10.1 above, no Mortgagee shall have any obligation or duty under this Development Agreement to perform Developer's obligations or other affirmative covenants of Developer hereunder; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Development Agreement, or by the Project Approvals and Applicable Rules.

10.3. Notice of Default to Mortgagee; Right of Mortgagee to Cure. If City receives a notice from a Mortgagee requesting a copy of any Notice of Default given to Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice given to Developer with respect to any claim by City that Developer has committed a default, and if City makes a determination of noncompliance hereunder, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Developer. Each Mortgagee shall have the right (but not the obligation) to cure or remedy, or to commence to cure or remedy, the Event of Default claimed or the areas of noncompliance set forth in City's notice, provided that Mortgagee shall have an additional fifteen (15) days (with respect to monetary defaults only) or an additional thirty (30) days (with respect to non-monetary defaults), or such reasonable period of time beyond thirty (30) days, if such non-monetary default is not

susceptible to being cured within such thirty (30) days, beyond the applicable cure period set forth in this Development Agreement within which to cure or to commence the curing of such default as therein provided during which additional period this Development Agreement shall remain in full force and effect (nothing contained herein shall obligate a Mortgagee to cure a default, it being understood that any election to cure a default shall be at the Mortgagee's sole option). In case of a default that is not susceptible of being cured by the Mortgagee, this Development Agreement will remain in full force and effect if Mortgagee institutes proceedings to acquire title to the Property by foreclosure or otherwise, and diligently prosecutes the same to completion. If the Mortgagee, or its nominee, or a purchaser at a foreclosure sale, or by deed in lieu of foreclosure, shall cure all defaults that are susceptible of being cured by such Mortgagee, or by such purchaser, as the case may be, then the defaults of any prior holder of the defaulting Developer's interest hereunder that are not susceptible of being cured by such Mortgagee or by such purchaser shall no longer be deemed to be defaults hereunder. This Development Agreement shall not be amended or modified without the consent of any Mortgagee who has requested that City provide it a copy of any Notice of Default pursuant to this Section.

10.4. Limitation of Liability. No Mortgagee shall be liable for or obligated to perform the obligations of Developer under this Development Agreement unless and until such Mortgagee becomes the owner of Developer's interest in the Property by foreclosure, assignment, transfer in lieu of foreclosure, or otherwise or except to the extent such Mortgagee undertakes to perform and continues to perform Developer's obligations hereunder. Thereafter, such Mortgagee and its successors and assigns shall each remain liable for the obligations of Developer only so long as such Mortgagee or its successors or assigns is the owner of Developer's interest in the Property. Any such Mortgagee shall be entitled to all of the rights and privileges of Developer under this Development Agreement and shall have the right to assign in the same manner as the Developer.

10.5. No Supersedure. Nothing in this Article 10 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision improvement agreement or other obligation incurred with respect to the Project outside this Development Agreement, nor shall any provision of this Article 10 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 10.3.

10.6. Technical Amendments to this Article 10. City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Development Agreement that are required by lenders for the acquisition and construction of the improvements on the Property or any refinancing thereof and to otherwise cooperate in good faith to facilitate Developer's negotiations with lenders.

ARTICLE 11. MISCELLANEOUS PROVISIONS

11.1. Limitation on Liability. Notwithstanding anything to the contrary contained in this Development Agreement, in no event shall: (a) any partner, officer, director, member, shareholder, employee, affiliate, manager, representative, or agent of Developer or any general partner of Developer or its general partners be personally liable for any breach of this Development Agreement by Developer, or for any amount that may become due to City under

the terms of this Development Agreement; or (b) any member, officer, agent or employee of City be personally liable for any breach of this Development Agreement by City or for any amount that may become due to Developer under the terms of this Development Agreement.

11.2. Force Majeure. The time within which Developer shall be required to perform any act under this Development Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes; lock-outs; Acts of God; severe and unsafe weather; unavailability of materials or labor by reason of regulations or order of any governmental or regulatory body; unavailability of labor for any other reason beyond the reasonable control of the Party seeking the delay; changes in local, state or federal laws or regulations, any development moratorium, or any action of other public agencies that regulate land use, development or the provision of services when any of the foregoing prevents, prohibits or delays construction of the Project; enemy action; riots; insurrections; civil disturbances; wars; terrorist acts; fire; unavoidable casualties; natural disasters; emergency declarations; epidemics; pandemics; government mandated shutdowns; litigation involving this Development Agreement or the Project Approvals; any other cause beyond the reasonable control of Developer that substantially interferes with carrying out the development of the Project; or the occurrence of any of the following events: (a) the governmental offices where any action required under this Development Agreement (collectively, “**Government Offices**”) are not open for business and any Government Offices’ systems are not operational such that such action cannot occur; (b) any other third party is not open for business such that its services required as necessary for a Party to perform obligations under this Development Agreement cannot be performed; (c) overnight couriers are not operating such that any documents cannot be delivered to the extent such documents are required to be originals; or (d) financial institutions or wire transfer systems are not operating, such that, as part of consummation of financial transactions contemplated hereby cannot occur) (each of the events described in (a) through (d), a “**Government Closure**” (collectively, “**Force Majeure Events**”). Such extension(s) of time shall not constitute an Event of Default and shall occur at the request of any Party. In addition, the Term of this Development Agreement and any subdivision map or any of the other Project Approvals shall not include any period of time during which (i) a development moratorium including, but not limited to, a water or sewer moratorium, is in effect; (ii) the actions of public agencies that regulate land use, development, construction, or the provision of services to the Property prevent, prohibit or delay the construction or development of the Project; (iii) there is any mediation, arbitration, litigation, or other administrative or judicial proceeding pending involving the Vested Elements, or Project Approvals; and/or any Force Majeure Event(s) other than a Government Closure prevent, prohibit or delay the construction or development of the Project after issuance of the first building Permit in Phase III or, if no building permit in Phase III has been issued, in the final year of the Term. The Term of the Project Approvals shall therefore be extended by the length of any development moratorium or similar action; the amount of time any actions of public agencies prevent, prohibit, or delay the construction or development of the Project; the amount of time to finally resolve any mediation, arbitration, litigation, or other administrative or judicial proceeding involving the Vested Elements or Project Approvals; and the amount of time any Force Majeure Event(s) other than a Government Closure prevent, prohibit or delay the construction or development of the Project after issuance of the first building Permit in Phase III or, if no building permit in Phase III has been issued, in the final year of the Term. Furthermore, in the event the issuance of a building permit for any part of the Project is delayed as a result of

Developer's inability to obtain any other required permit or approval, then the Term of this Development Agreement and the Project Approvals shall be extended by the period of any such delay. For the avoidance of doubt, none of the foregoing is an event of force majeure: (1) a decline in market conditions; (2) economic recessions; (3) inability to obtain credit or financing; or (4) the appointment of a receiver to take possession of the assets of Developer, an assignment by Developer, for the benefit of creditors, or any other action taken or suffered by Developer under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute.

11.3. Notices, Demands and Communications Between the Parties. Formal written notices, demands, correspondence and communications between City and Developer shall be sufficiently given if delivered personally (including delivery by private courier), dispatched by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized overnight courier service, or by electronic facsimile transmission followed by delivery of a "hard" copy to the offices of City and Developer indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either Party may from time-to-time designate in writing at least fifteen (15) days prior to the name and/or address change and as provided in this Section 11.3.

City: City of San Carlos
600 Elm Street
San Carlos, CA 94070
Attn: City Manager

with copies to: City of San Carlos
600 Elm Street
San Carlos, CA 94070
Attn: City Attorney

City of San Carlos
600 Elm Street
San Carlos, CA 94070
Attn: CDD Director

Developer: ARE-San Francisco No. 88, LLC
c/o Alexandria Real Estate Equities
26 North Euclid Avenue
Pasadena, CA 91101
Attention: Corporate Secretary

with copies to: Cox, Castle & Nicholson, LLP
50 California Street, 32nd Floor
San Francisco, CA 94111
Attn: Margo Bradish, Esq.

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received

on the first to occur of (i) actual receipt by any of the addresses designated above as the Party to whom notices are to be sent, or (ii) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices delivered by overnight courier service as provided above shall be deemed to have been received twenty-four (24) hours after the date of deposit. Notices delivered by electronic facsimile transmission shall be deemed received upon receipt of sender of electronic confirmation of delivery, provided that a “hard” copy is delivered as provided above.

11.4. Project as a Private Undertaking; No Joint Venture or Partnership. The Project constitutes private development, neither City nor Developer is acting as the agent of the other in any respect hereunder, and City and Developer are independent entities with respect to the terms and conditions of this Development Agreement. Nothing contained in this Development Agreement or in any document executed in connection with this Development Agreement shall be construed as making City and Developer joint venturers or partners.

11.5. Non-Intended Prevailing Wage Requirements. Nothing in this Development Agreement shall in any way require, or be construed to require, Developer to pay prevailing wages with respect to any work of construction or improvement within the Project (a “**Non-Intended Prevailing Wage Requirement**”). But for the understanding of the Parties as reflected in the immediately preceding sentence, the Parties would not have entered into this Development Agreement based upon the terms and conditions set forth herein. Developer and City have made every effort in reaching this Development Agreement to ensure that its terms and conditions will not result in a Non-Intended Prevailing Wage Requirement. These efforts have been conducted in the absence of any applicable existing judicial interpretation of the recent amendments to the California prevailing wage law. If, despite such efforts, any provision of this Development Agreement shall be determined by any court of competent jurisdiction to result in a Non-Intended Prevailing Wage Requirement, such determination shall not invalidate or render unenforceable any provision hereof; provided, however, that the Parties hereby agree that, in such event, upon notice by Developer to City, which notice shall identify the provision(s) of this Development Agreement that would result in the Non-Intended Prevailing Wage Requirement, this Development Agreement shall be reformed such that each provision of this Development Agreement that results in the Non-Intended Prevailing Wage Requirement will be removed from this Development Agreement as though such provision(s) were never a part of the Development Agreement. In lieu of such provision(s), (i) in the event of removal of a Community Benefit provision before such Community Benefit is provided, Developer shall pay City the Community Benefit value specified for such Community Benefit in this Development Agreement at the time that otherwise would have been required for performance of the Community Benefit pursuant to this Agreement, and (ii) in the event of removal of a provision of this Development Agreement other than a Community Benefit provision, replacement provisions (“**Replacement Provisions**”) shall be added as a part of this Development Agreement as similar in terms to such removed provision(s) as may be possible and legal, valid, and enforceable but without resulting in the Non-Intended Prevailing Wage Requirement pursuant to the following process: Within thirty (30) days after Developer’s notice pursuant to this Section 11.5, the Parties shall meet and confer for a period not to exceed sixty (60) days to attempt to identify mutually acceptable Replacement Provisions. If the Parties agree on Replacement Provisions, the City shall process an operating memorandum pursuant to Section 6.2 herein or an amendment to this Development Agreement pursuant to Section 6.3 herein, as applicable, to document the Replacement Provisions. If the

Parties are unable to agree to Replacement Provisions, or if the City does not approve the operating memorandum or amendment to this Development Agreement, as applicable, the matter shall be submitted to mediation in accordance with rules to be mutually agreed upon by the Parties.

11.6. Compliance with Law. Developer, at its sole cost and expense, shall comply with the requirements of, and obtain all permits and approvals required by local, State and Federal agencies having jurisdiction over the Property or Project. Furthermore, Developer shall carry out the Project work in conformity with all (a) State and Federal laws and regulations applicable to the Property and the Project as enacted, adopted and amended from time to time, including applicable State labor laws and standards; (b) Applicable Rules; and (c) applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq. (“**Applicable Law**”).

11.7. Indemnification. Developer shall indemnify, at City’s request defend, and hold the City harmless from and against any and all claims, demands, losses, liabilities, damages, liens, obligations, interest, injuries, penalties, fines, lawsuits or other proceedings, judgments and awards and costs and expenses (“**Claims**”) arising directly as a result of Developer’s acts, omissions, negligence or willful misconduct in connection with Developer’s performance under this Development Agreement or arising directly as a result of Developer’s (or Developer’s contractors, subcontractors, agents, or employees) work performed in connection with the development of the Property or the Project, including without limitation, Claims involving bodily injury, death or property damage. Developer’s indemnification obligations set forth in this Section shall not apply to the extent any such Claims are the result of the active negligence or willful misconduct of City. Developer’s indemnification obligation under this Section includes any and all present and future Claims arising out of or in any way connected with Developer’s or its contractors’ or subcontractors’ failure to comply with any Applicable Law as set forth in Section 11.6.

11.8. Severability. If any terms or provision(s) of this Development Agreement or the application of any term(s) or provision(s) of this Development Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Development Agreement or the application of this Development Agreement to other situations, shall remain in full force and effect unless amended or modified by mutual consent of the Parties; provided that, if the invalidation, voiding or enforceability would deprive either City or Developer of material benefits derived from this Development Agreement, or make performance under this Development Agreement unreasonably difficult, then City and Developer shall meet and confer and shall make good faith efforts to amend or modify this Development Agreement in a manner that is mutually acceptable to City and Developer. Notwithstanding the foregoing, if any material provision of this Development Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, Developer (in its sole and absolute discretion) may terminate this Development Agreement by providing written notice of such termination to City.

11.9. Section Headings. Article and Section headings in this Development Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, or conditions of this Development Agreement.

11.10. Construction of Agreement. This Development Agreement has been reviewed and revised by legal counsel for both Developer and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Development Agreement.

11.11. Entire Agreement. This Development Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Development Agreement consists of forty-five (45) pages including the Recitals, and eleven (11) exhibits and one (1) appendix, attached hereto and incorporated by reference herein, which, together with the Project Approvals, constitute the entire understanding and agreement of the Parties and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. The exhibits and appendices are as follows:

Exhibit A	Legal Description of the Property
Exhibit B	Map of the Property
Exhibit C	Conceptual Creek/Trail Improvements
Exhibit D	Bridge
Exhibit E	Form of Creek Trail Easement and Maintenance Agreement
Exhibit F	Conceptual Commercial Street Improvements
Exhibit G	Form of Public Parking Agreement
Exhibit H	Impact Fees
Exhibit I	Form of Assignment and Assumption Agreement
Exhibit J	Form of Bridge Easement and Maintenance Agreement
Exhibit K	Form of Covenants, Agreements, and Deed Restrictions for Privately Owned Publicly Accessible (POPA) Campus Areas
Appendix I	Definitions

11.12. Estoppel Certificates. Either Party may, at any time during the Term of this Development Agreement, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (i) this Development Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Development Agreement has not been amended or modified either orally or in writing, or

if amended; identifying the amendments, (iii) the requesting Party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (iv) any other information reasonably requested. The Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within twenty (20) days following the receipt thereof, provided that this twenty (20) day period shall be extended by the number of days that the City offices are closed due to furlough during such period. The failure of either Party to provide the requested certificate within such twenty (20) day period, as extended in accordance with the preceding sentence, shall constitute a confirmation that this Development Agreement is in full force and effect and no modification or default exists. Either the City Manager or the Director shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

11.13. Recordation. Pursuant to California Government Code Section 65868.5, within ten days after the ordinance approving this Development Agreement takes effect, the City Manager shall execute this Development Agreement on behalf of the City, and the City Clerk shall record this Development Agreement with the San Mateo County Recorder. Thereafter, if this Development Agreement is terminated, modified or amended, the City Clerk shall record notice of such action with the San Mateo County Recorder.

11.14. No Waiver. No delay or omission by either Party in exercising any right or power accruing upon noncompliance or failure to perform by the other Party under any of the provisions of this Development Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either Party of any of the covenants or conditions to be performed by the other Party shall be in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

11.15. Time Is of the Essence. Time is of the essence for each provision of this Development Agreement for which time is an element.

11.16. Governing Law. This Development Agreement shall be construed and enforced in accordance with the laws of the State of California.

11.17. Attorneys' Fees. Should any legal action be brought by either Party because of a breach of this Development Agreement or to enforce any provision of this Development Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and such other costs as may be found by the court or referee, as applicable.

11.18. Third Party Beneficiaries. Except as otherwise provided herein, City and Developer hereby renounce the existence of any third-party beneficiary to this Development Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

11.19. Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Development Agreement is contained in the instrument by which such person acquired an interest in the Property.

11.20. Counterparts. This Development Agreement may be executed by each Party on a separate signature page, and when the executed signature pages are combined, shall constitute one single instrument.

11.21. Authority. The persons signing below represent and warrant that they have the authority to bind their respective Party and that all necessary board of directors', shareholders', partners', city councils', redevelopment agencies' or other approvals have been obtained.

IN WITNESS WHEREOF, City and Developer have executed this Development Agreement as of the date first set forth above.

DEVELOPER:

ARE-SAN FRANCISCO NO. 88, LLC,
a Delaware limited liability company

By: Alexandria Real Estate Equities, L.P.,
a Delaware limited partnership,
managing member

By: ARE-QRS Corp.,
a Maryland corporation,
general partner

By: _____
[City Signatures Follow]

CITY:

CITY OF SAN CARLOS,
a California municipal corporation

By: _____
Jeff Maltbie, City Manager

ATTESTATION:

By: Crystal Mui, City Clerk

APPROVED AS TO FORM:

By: Gregory J. Rubens, City Attorney

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On __ ____, 20__ before me, _____ (here insert name of the officer),
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

[Seal]

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On __ ____, 20__ before me, _____ (here insert name of the officer),
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

[Seal]

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY
[ATTACHED]

EXHIBIT A

LEGAL DESCRIPTION

(APN: 046-184-290, 046-184-280, 046-184-090, 046-184-120, 046-184-110, 046-184-300, 046-162-210, 046-162-010, 046-162-290, 046-162-280, AND 046-162-270)

All that certain real property situated in the City of San Carlos, County of San Mateo, State of California. Being portions of the Northeast Quarter of the Northwest Quarter of Section 13, Township 5 South, Range 4 West, Mount Diablo Base and Meridian (NE ¼ of NW ¼ of Section 13, Pulgas Rancho) being more particularly described as follows:

BEGINNING at a 3/4" iron pipe tagged "RCE 30060" at the westerly and southerly corner of the subject of Tracts V and VI as described in that Grant Deed recorded on April 15, 2020, as Instrument No. 2020-034064, Official Records of San Mateo County; thence, proceeding clockwise the following courses and distances:

Course (1) North 42°20'30" West, a distance of 831.92 feet along the northeasterly line of Old County Road to the intersection with the southeasterly line of Commercial Street; thence,

Course (2) North 48°59'27" East, a distance of 1468.93 feet along the southeasterly line of Commercial Street to the intersection with the southwesterly line of Industrial Road; thence,

Course (3) South 35°57'58" East, a distance of 707.40 feet along the southwesterly line of Industrial Road; thence,

Course (4) South 43°47'37" West, a distance of 89.11 feet; thence,

Course (5) South 21°06'18" West, a distance of 167.71 feet; thence,

Course (6) South 51°06'13" West, a distance of 445.05 feet; thence,

Course (7) South 48°32'50" West, a distance of 335.40 feet; thence,

Course (8) South 56°11'42" West, a distance of 46.62 feet; thence,

Course (9) South 46°52'03" West, a distance of 188.20 feet; thence,

Course (10) South 27°37'00" West, a distance of 146.00 feet to the **POINT OF BEGINNING**.

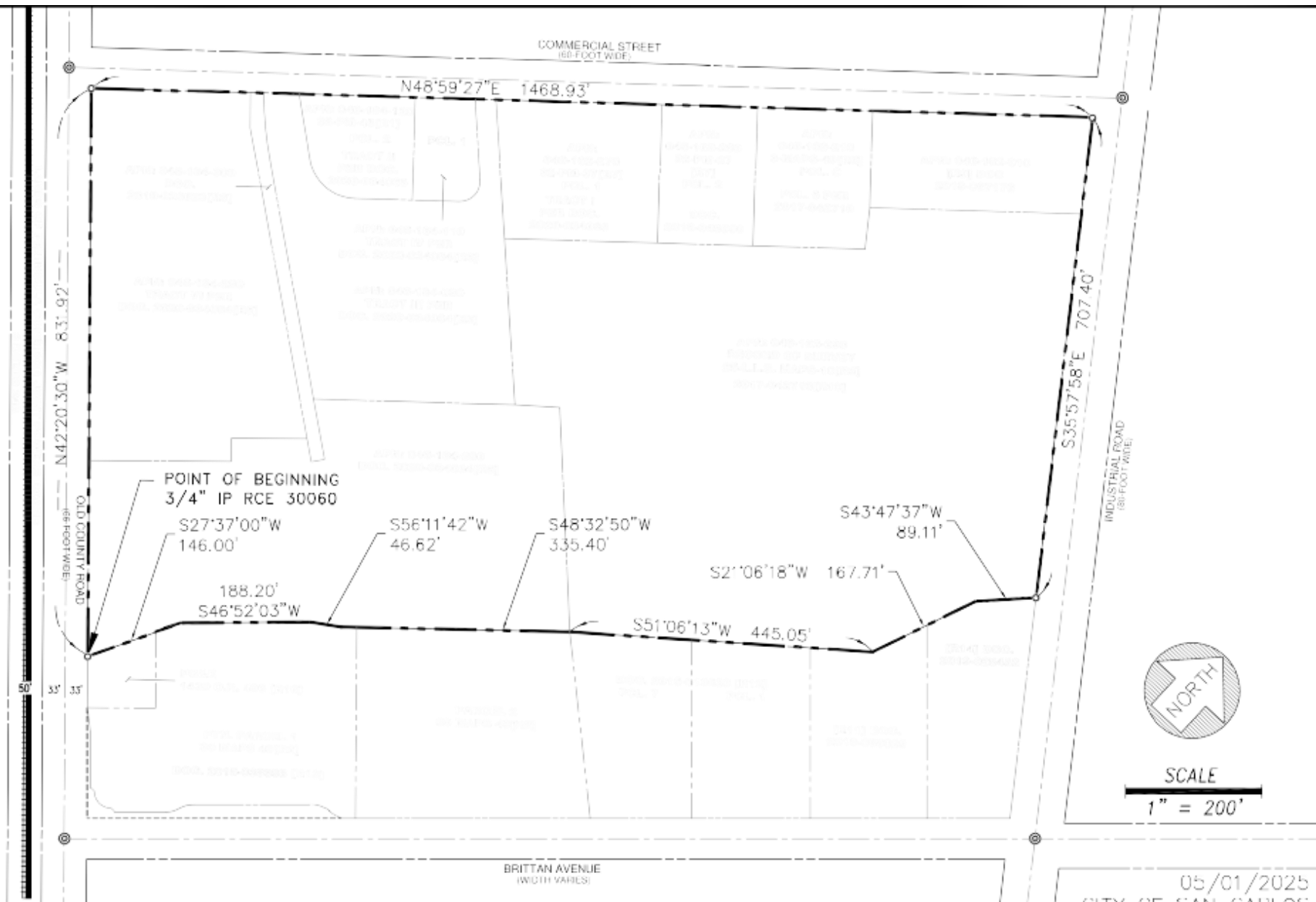
Containing 1,103,856 square feet (25.34 acres) more or less.

This legal description does not represent a legal parcel.

May 01, 2025

EXHIBIT B
MAP OF PROPERTY

[ATTACHED]



SCALE

1" = 200'

05/01/2025
CITY OF SAN CARLOS
SHEET 2 OF 2

FREYER & LAURETA, INC.

CIVIL ENGINEERS • SURVEYORS • CONSTRUCTION MANAGERS

150 Executive Park Blvd Suite 4200
San Francisco, CA 94134
(415) 534-7070 • www.freyerlaureta.com

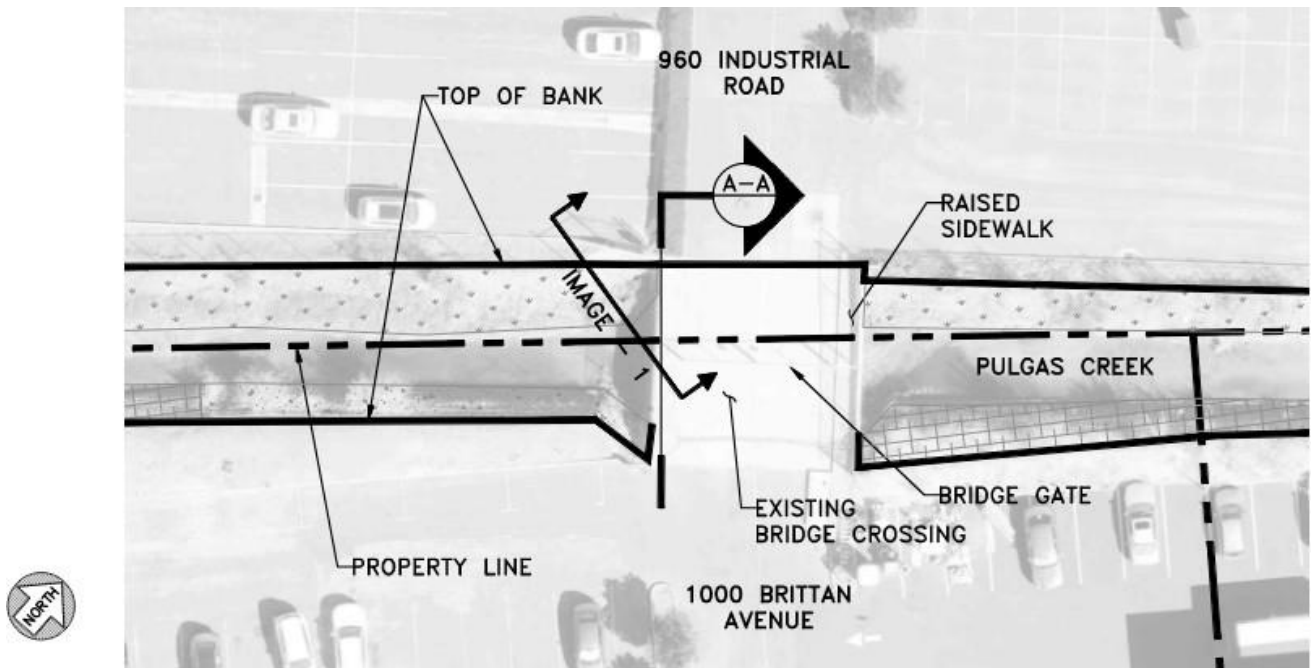
EXHIBIT B

PLAT TO ACCOMPANY LEGAL DESCRIPTION

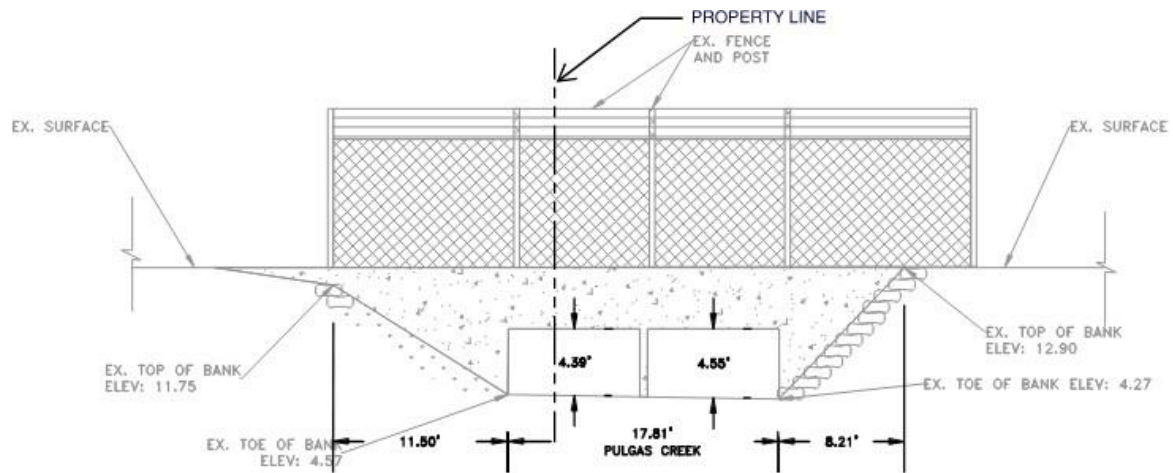
The site plan illustrates a residential development bounded by Industrial Road to the north, Old County Road to the south, and the City of Wilson Commercial District to the west. The development includes several building footprints labeled B1 through B8, parking areas (PG1, PG2), and a central green space. Key features include the 'LIMIT OF WORK' line, 'LIMIT OF OFF-SITE CREEK IMPROVEMENTS', 'PROPERTY LINE', 'LIMIT OF PROJECT CREEK IMPROVEMENTS', and 'LIMIT OF CREEK TRAIL IMPROVEMENTS'. The plan also shows 'Creek Improvements' and 'Creek Trail Improvements' along the eastern boundary. A north arrow is located near the center of the site.

4872-1003-3234 v34
088919\14178297v25

EXHIBIT D
BRIDGE
[ATTACHED]



① BRIDGE CROSSING – PLAN VIEW



A-A BRIDGE CROSSING – SECTION A-A

EXHIBIT E

FORM OF CREEK TRAIL EASEMENT AND MAINTENANCE AGREEMENT

[ATTACHED]

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of San Carlos
600 Elm Street
San Carlos, California 94070
Attention: City Clerk

Record for the Benefit of
The City of San Carlos
*Pursuant to Government Code
Section 27383*

Space Above Reserved for Recorder's Use Only

CREEK TRAIL EASEMENT AND MAINTENANCE AGREEMENT

This Creek Trail Easement and Maintenance Agreement (“**Easement Agreement**” or “**Agreement**”) is made and entered into on this ____ day of _____ (“**Easement Agreement Effective Date**”), by and between _____ (“**Owner**”), and the CITY OF SAN CARLOS, a charter city and California municipal corporation (“**City**”) (each individually a “**Party**”) and together, the “**Parties**”).

R E C I T A L S

A. Owner is the current fee owner of that certain real property consisting of approximately 25.34 acres located within the City of San Carlos, County of San Mateo, State of California, designated as APNs _____ and depicted in Exhibit “A”, attached hereto and incorporated herein by reference (the “**Property**”).

B. The Property is being developed as 1,630,000 square feet of gross floor area of Class A office/research and development buildings, which may include a café and/or tenant amenities (possibly including a childcare center); surface parking lots and parking garages; and associated improvements (the “**Project**”).

C. On _____, the City Council of the City of San Carlos adopted Ordinance No. ____, approving a Development Agreement by and between City and Owner recorded in the Official Records of San Mateo County at _____, (“**Development Agreement**”) and issued several other approvals identified in the Development Agreement.

D. The Development Agreement contemplates, among other things, that the Owner will construct on the Property a segment of the planned publicly accessible bicycle and pedestrian pathway that will parallel Pulgas Creek (“**Creek Trail**”).

E. City and Owner now desire that Owner grant to City an easement for public use and enjoyment of the Creek Trail, in the area legally described and shown in Exhibit “B”, attached hereto and incorporated herein by reference (“**Creek Trail Easement Area**”), as a

privately owned, publicly accessible space and provide for the maintenance of the Creek Trail Easement Area as set forth below.

AGREEMENT

NOW, THEREFORE, the Parties hereby incorporate the above recitals by this reference and agree as follows:

1. **Grant of Creek Trail Easement.** For valuable consideration, including the benefits and rights conferred upon Owner under the Project Approvals (as defined in the Development Agreement) and subject to the terms of this Easement Agreement, Owner hereby grants and dedicates to the City a non-exclusive easement for use and enjoyment by the general public on, over and across the Creek Trail Easement Area for purposes of walking, cycling, jogging, running, roller blading, skateboarding, roller skating, and similar non-automotive recreational activities (“**Creek Trail Easement**”). This grant of the Creek Trail Easement conveys no rights affecting the use of Owner’s lands that are not included in the Creek Trail Easement Area and Owner reserves all right to lands outside the Creek Trail Easement Area.

2. **Operating Hours.** The Creek Trail Easement Areas shall publicly accessible from thirty (30) minutes prior to sunrise to thirty (30) minutes prior to sunset, 7 days a week, except for closures permitted in Section 4.

3. **Rules and Regulations.** Owner shall have the right to adopt, amend from time to time, and enforce reasonable rules and regulations relating to use of the Creek Trail Easement Area, including for purposes of public health, safety and security and to avoid interference with commercial operations at the Project. Owner shall provide City notice of such rules and post signs with the rules and regulations online and in a conspicuous location in, on, or immediately adjacent to the Creek Trail Easement Area. Without limiting the generality of the foregoing, Owner shall have the right to place reasonable restrictions on the time, place, and manner of any organized gatherings in the Creek Trail Easement Area and the right to reasonably restrict the use of motorized means of transportation within the Creek Trail Easement Area.

4. **Maintenance.** During the term of this Agreement, Owner shall maintain the Creek Trail Easement Area and the improvements to be constructed within the Creek Trail Easement Area in accordance with the Development Agreement and the Project Approvals (collectively, the “**Creek Trail Improvements**”) in good condition and in accordance with applicable law. All Creek Trail Improvements shall be repaired or replaced with materials, apparatus and facilities of at least equal quality of the materials, apparatus and facilities at initial construction of the Creek Trail Improvements. Owner may temporarily limit or close the Creek Trail Easement Area to perform maintenance, repair and replacement activities on the Creek Trail Easement Area, the Creek Trail Improvements, or adjacent buildings and Project improvements. Without limiting the foregoing, Owner agrees to utilize diligent good faith efforts to ensure that any maintenance, repair or other work is undertaken expeditiously and in a manner that minimizes any adverse impacts on any of the rights under this Agreement. Owner shall erect appropriate signage and safety barriers to notify the public of any restriction on public use of the Creek Trail Easement Area and/or Creek Trail Improvements during repairs, replacements,

upgrades, and modifications of the Creek Trail Improvements or any adjacent Buildings and/or Project improvements.

5. Future Modifications. Should Owner desire to modify the Creek Trail Easement Area and/or Creek Improvement design, location, and/or configuration, Owner shall submit applications to City for all necessary permits in accordance with applicable law and the Development Agreement.

6. Default and Remedies. Breach of, failure, or delay by either Party to perform any term or condition of this Easement Agreement shall constitute a default. In the event of any default of any term, condition, or obligation of this Easement Agreement, the non-defaulting Party shall give the defaulting Party notice in writing specifying the nature of the alleged default and the manner in which such default may be satisfactorily cured (“**Notice of Breach**”). The defaulting Party shall cure the default within 90 days following receipt of the Notice of Breach, provided, however, if the nature of the alleged default is non-monetary and such that it cannot reasonably be cured within such 90-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure, provided that if the cure is not diligently prosecuted to completion, then no additional cure period shall be provided. If the alleged failure is cured within the time provided above, then no default shall exist and the non-defaulting Party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a default shall exist under this Easement Agreement and the non-defaulting Party may bring any action at law or in equity to enforce the terms of this Easement Agreement.

7. Term. This Easement Agreement will commence on the Effective Date. Owner’s obligation to make the Creek Trail Easement Area available to the public under this Agreement shall commence upon City’s issuance of a final certificate of occupancy for the first building in the Phase of the Project in which the Creek Trail Easement Area is located and terminate as provided in Section 8. Notwithstanding the foregoing, upon forty-eight (48) hours’ prior written notice to City, Owner may temporarily limit or close the Creek Trail Easement Area to perform construction activities on the Creek Trail Easement Area, the Creek Trail Improvements, or adjacent buildings and Project improvements.

8. Termination. This Easement Agreement shall terminate in the event that City grants consent to termination in its sole and absolute discretion or in the event that any of the following occur: (a) the Project is damaged or destroyed by a fire, earthquake, explosion, tornado, flood, or hurricane or other casualty (each, a “**Casualty**”), the Project is completely demolished following the Casualty, and the Project is not reconstructed; (b) all or a material portion of the Property is acquired by a public entity exercising its power of eminent domain or under threat of condemnation; (c) the Pulgas Creek no longer exists and the pathway improvements in the Creek Trail Easement Area are not connected to segments of the Creek Trail or segments of another trail for public use that is constructed by the City or any private developer or developers as a condition of approval for a project or projects on neighboring properties; or (d) the Property no longer is operating as the Project, Owner in its sole discretion offers the Creek Trail for dedication to the City, and the City does not accept the offer of dedication. In the event of termination of this Easement Agreement, City and Owner shall promptly execute,

acknowledge and record in the County Records a quitclaim or notice of termination of the Creek Trail Easement.

9. Subordination. Owner shall cause the mortgagee or beneficiary under any mortgage or deed of trust or similar financing instrument recorded against the Property (each, a “**Mortgage**”) as of the recordation date hereof to subordinate the lien of its Mortgage to this Agreement within sixty (60) days following the effective date of this Agreement. The form of subordination agreement shall be substantially as set forth on the Lender Consent and Subordination page immediately following the signature page hereof, or such other form as is reasonably approved by the City Attorney.

10. Mortgagee Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument (“**Mortgage**”); provided, however, that any successor of Owner to the Property shall be bound by this Agreement whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise. Neither City nor Owner shall be permitted to cancel, surrender or materially modify the terms of this Easement Agreement without the consent of any mortgagee of record. Any mortgagee of record shall have the right (but not the obligation) to perform Owner’s obligations hereunder. Without limiting the foregoing, in the event of a default on the part of Owner hereunder, each mortgagee that has given notice of its Mortgage to City (each a “**Mortgage**”) shall have the right (but not the obligation) during the same period available to Owner to cure or remedy, or to commence to cure or remedy, the default claimed or the areas of noncompliance set forth in City’s notice, provided that Mortgagee shall have an additional fifteen (15) days (with respect to monetary defaults only) or an additional thirty (30) days (with respect to non monetary defaults), or such reasonable period of time beyond thirty (30) days, if such non-monetary default is not susceptible to being cured within such thirty (30) days, beyond the applicable cure period set forth in this Agreement within which to cure or to commence the curing of such default as therein provided during which additional period this Agreement shall remain in full force and effect (nothing contained herein shall obligate a Mortgagee to cure a default, it being understood that any election to cure a default shall be at the Mortgagee’s sole option). In case of a default which is not susceptible of being cured by the Mortgagee, this Agreement will remain in full force and effect if Mortgagee institutes proceedings to acquire title to the Property by foreclosure or otherwise, and diligently prosecutes the same to completion. If the Mortgagee, or its nominee, or a purchaser at a foreclosure sale, or by deed in lieu of foreclosure, shall cure all defaults which are susceptible of being cured by such Mortgagee, or by such purchaser, as the case may be, then the defaults of any prior holder of the defaulting Owner’s interest hereunder which are not susceptible of being cured by such Mortgagee or by such purchaser shall no longer be deemed to be defaults hereunder. In the event any Mortgage encumbering the Property shall be foreclosed, the Owner shall remain liable for any defaults under this Agreement existing at the time of any foreclosure, and the successor in title of Owner to the Property shall be responsible only to the extent necessary to bring the Property into current compliance with Owner’s obligations under this Agreement, and not for any past uncured defaults. Upon request of any such mortgagee, the City will confirm the provisions hereof in a separate writing in favor of any Mortgagee, along with such changes reasonably requested by such Mortgagee and consented to by the City (not to be unreasonably withheld, conditioned or delayed).

11. Insurance. Owner shall obtain and maintain at all times during the Term insurance against claims for injuries to persons or damage to property which may arise out of any manner including (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Creek Trail Easement Area, or any part thereof, whether such injury, death, damage or destruction is caused by the person or property of the Owner, representatives, employees or subcontractors. The insurance carrier is required to maintain an A.M. Best rating of not less than "A-:VII".

11.1 Coverages and Limits. Owner, at its sole expense, shall maintain the types of coverages and minimum limits indicated below, unless otherwise approved by City in writing. These minimum amounts of coverage will not constitute any limitations or cap on Owner's indemnification obligations under this Easement Agreement.

a. Commercial General Liability Insurance. Owner shall maintain occurrence based coverage with limits not less than \$2,000,000 per occurrence. If the submitted policies contain aggregate limits, such limits will apply separately to the project, or location that is the subject of this Easement Agreement or the aggregate will be twice the required per occurrence limit. The Commercial General Liability insurance policy shall be endorsed to name the City, its officers, agents, employees and volunteers as additional insureds, and to state that the insurance will be primary and not contribute with any insurance or self-insurance maintained by the City.

b. Business Automobile Liability Insurance. Owner shall maintain coverage with limits not less than \$1,000,000 per each accident for owned, hired and non-owned automobiles.

c. Workers' Compensation and Employer's Liability Insurance. Owner shall maintain coverage as required by the California Labor Code and Employer's Liability limits with limits not less than \$1,000,000 per each accident for bodily injury or disease. The Worker's Compensation policy shall contain an endorsement stating that the insurer waives any right to subrogation against the City, its officers, agents, employees, and volunteers.

11.2 Providing Certificates of Insurance and Endorsements. Prior to City's execution of this Easement Agreement, Owner shall provide to City certificates of insurance and above-referenced endorsements sufficient to satisfaction of City's Risk Manager. In no event shall Owner commence any work under this Easement Agreement until certificates of insurance and endorsements have been accepted by City's Risk Manager.

11.3 Failure to Maintain Coverage. If Owner fails to comply with these insurance requirements, then City will have the option to declare Owner in default.

11.4 Submission of Insurance Policies. City reserves the right to require, at any time, complete copies of any or all required insurance policies and endorsements.

11.5 Indemnification. Owner, to the fullest extent permitted by law, shall indemnify, defend (with counsel reasonably acceptable to City), and hold harmless the City, its officers, elected and appointed officials, agents, contractors, representatives and employees, (each, individually a "**City Party**" and collectively the "**City Parties**"), from and against any

and all third party suits or actions at law or in equity, liabilities, claims, obligations, losses, demands, penalties, fines, liens, judgments, damages, costs, and expenses (including reasonable attorneys' fees) ("**Claims**") including, but not limited to, Claims for bodily injury, sickness, disease or death of any person or damage to real or personal property, tangible or intangible, arising directly or indirectly from the acts, omissions, negligence or willful misconduct of Owner or its contractors, subcontractors, agents, or employees (each an "**Owner Party**" and collectively the "**Owner Parties**") in connection with the design, operation, or maintenance of the Creek Trail Easement Area or performance or failure to perform Owner's obligations under this Agreement. Owner's indemnity obligations under this Section shall not extend to Claims to the extent that any such Claims are the result of the gross negligence or willful misconduct of a City Party. The Owner's duty to indemnify and hold harmless City includes the duty to defend as set forth in Civil Code section 2778. Owner's indemnification obligations under this Section shall survive the termination of this Easement Agreement until such time as the statute of limitations periods for Claims that arose prior to termination expiration or termination has run.

12. **Estoppel Certificates.** Any Party to this Agreement shall, promptly upon the request of any other Party or any Mortgagee, execute, acknowledge and deliver to or for the benefit of the requesting Party (or Mortgagee, if applicable), at any time, from time to time, and at the expense of the Party (or, if requested by any Mortgagee, Owner) requesting a certificate as herein below described, its certificate certifying (1) that this Easement Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Easement Agreement is in full force and effect, as modified, and stating the modifications), (2) whether there are then existing any charges, offsets or defenses against the enforcement of any agreement, covenant or condition hereof on the part of the Party requesting (or, if requested by a Mortgagee, Owner) the certificate to be performed or observed (and, if so, specifying the same), (3) whether there are then existing any defaults on the part of the Party requesting the certificate (or, if requested by a Mortgagee, Owner) known to the Party delivering the certificate in the performance or observance of any agreement, covenant or condition hereof to be performed or observed and whether any notice has been given of any default which has not been cured (and, if so, specifying the same), and (4) any other matters reasonably requested.

13. **Miscellaneous Provisions.**

13.1 **Entire Agreement/Integration, Amendments.** This Easement Agreement and the Development Agreement contain the entire understanding and agreement of the Parties with respect to the subject matter hereof. No prior or other understanding shall be of any force or effect with respect to those matters covered herein. This Easement Agreement may be altered, amended or modified only by an instrument in writing, executed by the City and Owner, and recorded in the Official Records of San Mateo County. The Parties acknowledge that this Agreement has been executed pursuant to the terms of the Development Agreement and that Sections 2.4.3, 2.4.4, and 2.4.5 of the Development Agreement are incorporated herein by this reference to the extent they pertain to the Creek Trail.

13.2 **Recordation; No Waiver.** This Agreement shall be recorded in the Official Records of San Mateo County. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Agreement shall be construed to be a waiver of any

succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

13.3 Notice. Any notices required or permitted hereunder shall be in writing and shall be served on the Parties at the addresses set forth below. Each such notice shall be either sent by: (a) overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered upon receipt or refusal of delivery; (b) by sending the same to such Party by registered or certified mail, return receipt requested, with postage prepaid, in which case notice shall be deemed delivered upon receipt or refusal of delivery; or (c) personal delivery, in which case notice shall be deemed delivered upon receipt or refusal of delivery. A Party's address may be changed by written notice to the other Parties. Notice given by counsel shall be deemed given by the Party represented by such counsel.

Owner's Address:

With a copy to:

City's Address: City of San Carlos
600 Elm Street
San Carlos, CA 94070
Attn: City Manager

With copies to: City of San Carlos
600 Elm Street
San Carlos, CA 94070
Attn: CDD Director

and

City of San Carlos
600 Elm Street
San Carlos, CA 94070
Attn: City Attorney

13.4 Counterparts. This Easement Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

13.5 Recitals. The Recitals above are incorporated herein by reference.

13.6 Binding on Successors and Assigns. The Creek Trail Easement Area is to be burdened by, and City is to be benefited by, the provisions of this Easement Agreement pertaining to the grant of Easement, and such Creek Trail Easement Area shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the foregoing easements, limitations, restrictions, obligations and conditions. All provisions of this Easement Agreement shall run with the land and be binding upon all parties having or

acquiring any right, title, or interest in the Creek Trail Easement Area, and shall be binding upon and inure to the benefit of the City and its and their successors and assigns.

13.7 Partial Invalidity. If any term or provision of this Easement Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Easement Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Easement Agreement shall be valid and shall be enforced to the extent permitted by law.

13.8 Not a Public Dedication. Except as expressly provided herein, nothing herein contained shall be deemed to be a gift or dedication of the Creek Trail Easement Area or any other portion of Owner's Property to the general public or for any public purpose whatsoever, it being the intention of the parties that this Easement Agreement shall be limited to and for the purposes herein expressed. Owner shall reserve the right to record and/or post notices pursuant to Civil Code Sections 813 and/or 1008 with regard to the Creek Trail Easement Area.

13.9 No Partnership, Co-venture, or Principal-Agent Relationship. Nothing in this Agreement is intended to or does establish the Parties hereto as partners, coventurers, or principal and agent with one another.

13.10 No Third-Party Beneficiaries. Nothing in this Agreement shall provide any benefit to any third party (including but not limited to members of the public) or entitle any third party to any claim, cause of action, remedy or right of any kind.

13.11 Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of California, without regard to conflict of law principles.

13.12 Force Majeure. The time within which Owner shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes; lock-outs; Acts of God; severe and unsafe weather; unavailability of materials or labor by reason of regulations or order of any governmental or regulatory body; unavailability of labor for any other reason beyond the reasonable control of the Party seeking the delay; changes in local, state or federal laws or regulations, any development moratorium, or any action of other public agencies that regulate land use, development or the provision of services when any of the foregoing prevents, prohibits or delays construction of the Project; enemy action; riots; insurrections; civil disturbances; wars; terrorist acts; fire; unavoidable casualties; natural disasters; emergency declarations; epidemics; pandemics; government mandated shutdowns; litigation involving this Agreement or the Project Approvals (as defined in the Development Agreement); any other cause beyond the reasonable control of Owner that substantially interferes with carrying out the development of the Project; or the occurrence of any of the following events: (a) the governmental offices where any action required under this Agreement (collectively, "**Government Offices**") are not open for business and any Government Offices' systems are not operational such that such action cannot occur; (b) any other third party is not open for business such that its services required as necessary for a Party to perform obligations under this Agreement cannot be performed; (c) overnight couriers

are not operating such that any documents cannot be delivered to the extent such documents are required to be originals; or (d) financial institutions or wire transfer systems are not operating, such that, as part of consummation of financial transactions contemplated hereby cannot occur) (each of the events described in (a) through (d), a “**Government Closure**” (collectively, “**Force Majeure Events**”). Such extension(s) of time shall not constitute a default under this Agreement and shall occur at the request of any Party. For the avoidance of doubt, none of the foregoing is Force Majeure Event: (1) a decline in market conditions; (2) economic recessions; (3) inability to obtain credit or financing; or (4) the appointment of a receiver to take possession of the assets of Owner, an assignment by Owner, for the benefit of creditors, or any other action taken or suffered by Owner under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute.

13.13 Exhibits; Attachments. The following attachments are attached to this Easement Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Depiction of Property

Exhibit B Legal Description of Creek Trail Easement Area

13.14 Attorneys’ Fees. Should any legal action be brought by any party with respect to this Easement Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorney’s fees and such other costs as may be found by the court.

13.15 Joint and Several Liability. If more than one person or entity is included in the definition of Owner, the liability of all such persons hereunder shall be joint and several.

IN WITNESS WHEREOF, the City and Owner have executed this Easement Agreement as of the Easement Agreement Effective Date.

CITY

CITY OF SAN CARLOS, a municipal corporation

By: _____

[Signature must be notarized]

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____

OWNER

_____,
a _____

By: _____
Name: _____
Its: _____

[Signature must be notarized]

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signature: _____ (seal)

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signature: _____ (seal)

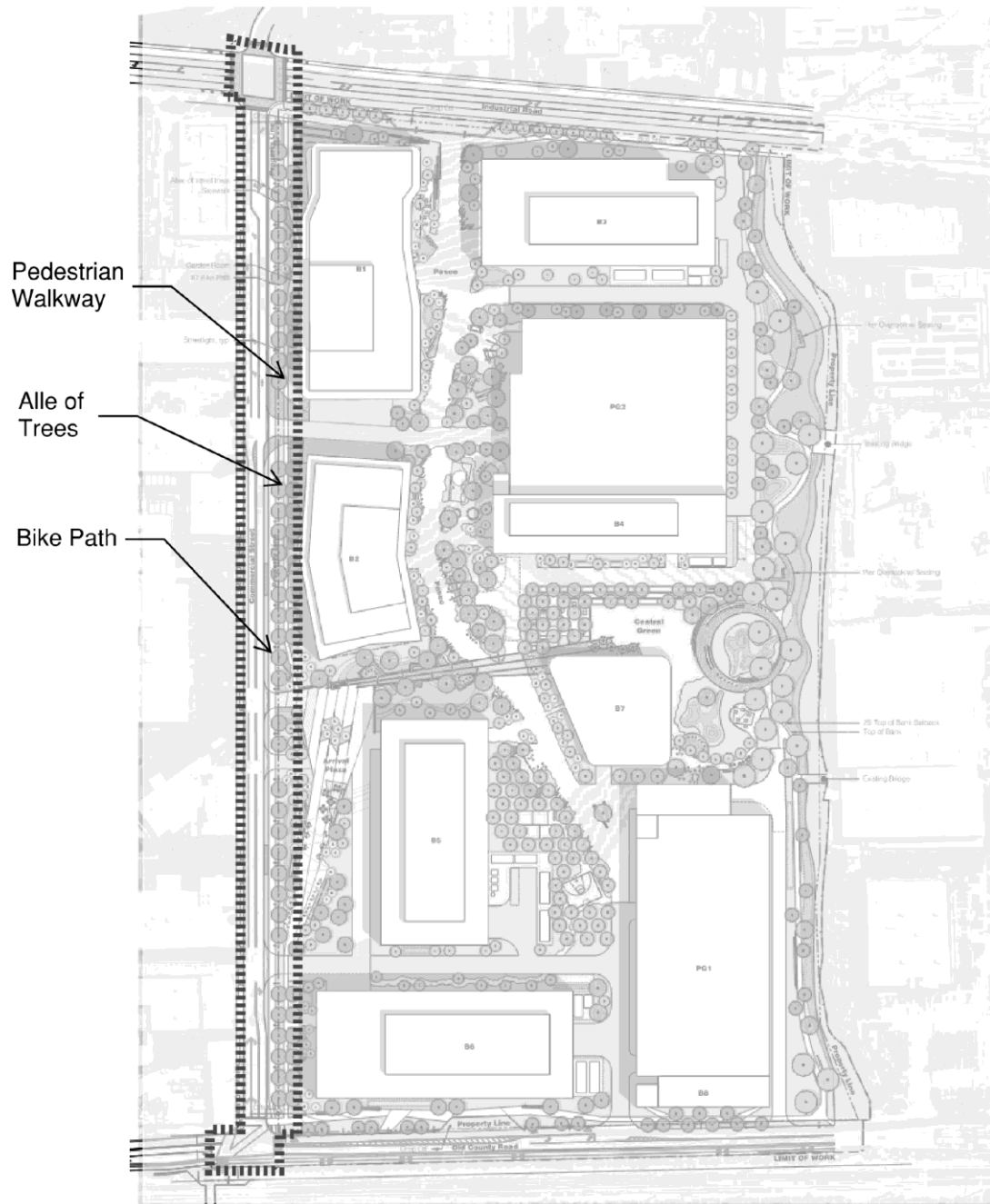
LENDER SUBORDINATION AND CONSENT

_____, with an office at _____, and its successors and assigns (“**Beneficiary**”), is the beneficiary under that certain [*Insert name and recording info of recorded loan document, such as: Deed of Trust, Security Agreement and Fixture Filing (with Assignment of Rents and Leases)*] executed by _____, as Trustor, dated as of _____ and recorded on _____ in the Official Records of San Mateo County, California (the “**Official Records**”) as Document No. _____ (the “**Deed of Trust**”).

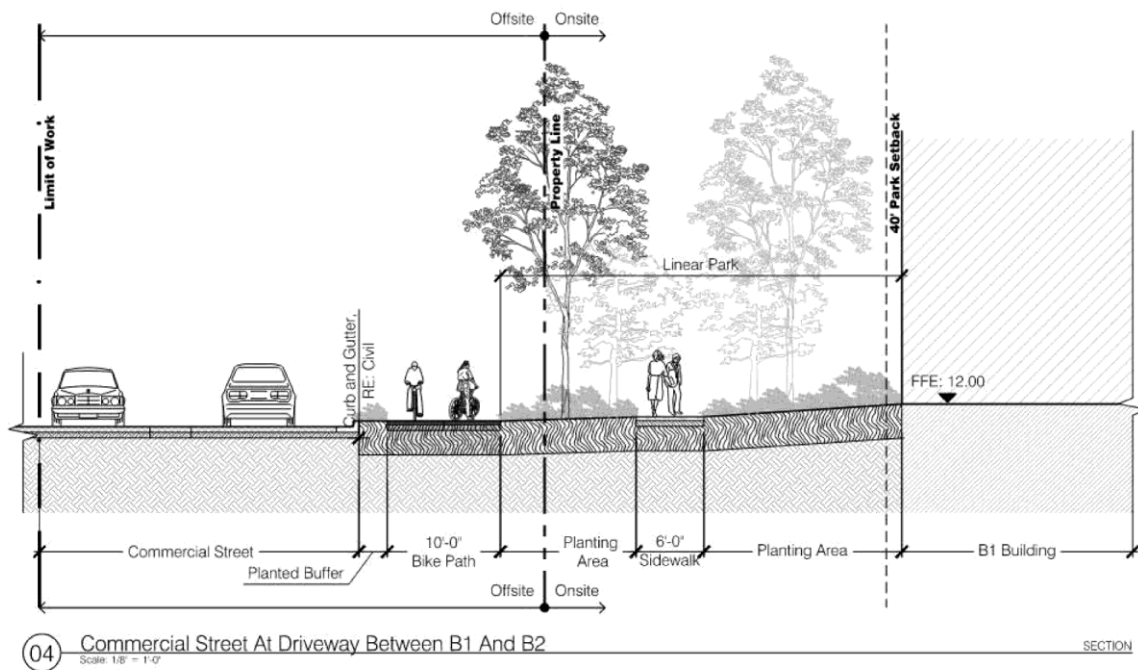
The Deed of Trust encumbers the real property described as the “**Property**” in the Creek Trail Easement and Maintenance Agreement (the “**Agreement**”) to which this Subordination and Consent of Lender is attached and made a part. As the beneficiary under the said Deed of Trust, Beneficiary hereby consents to the execution and recordation of the Agreement and agrees that upon recordation of the Agreement in the Official Records, Beneficiary’s interests in the Property and rights under the Deed of Trust shall be subject and subordinate to the Agreement.

EXHIBIT F

CONCEPTUAL COMMERCIAL STREET IMPROVEMENTS



Conceptual Commercial Street Improvements Plan



Conceptual Commercial Street Improvements Section

EXHIBIT G
FORM OF PUBLIC PARKING AGREEMENT
[ATTACHED]

When Recorded, Mail to:

City of San Carlos
600 Elm Street
San Carlos, California 94070
Attn: City Clerk

*This Instrument Benefits City Only.
No Fee Required. Gov. C. 27383*

SPACE ABOVE THIS LINE FOR RECORDER'S
USE

APN: _____

PUBLIC PARKING AGREEMENT

This Public Parking Agreement ("**Agreement**") is made and executed as of _____ by and between _____ ("**Owner**") and the CITY OF SAN CARLOS, a California municipal corporation ("**City**"). Owner and City are referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, Owner is the current fee owner of that certain real property consisting of approximately 25.34 acres located within the City of San Carlos, County of San Mateo, State of California, designated as APNs _____ and legally described in Exhibit "A", attached hereto and incorporated herein by reference (the "**Property**").

WHEREAS, the Property is a part of a development with approximately 1,630,000 square feet of gross floor area of Class A office/research and development buildings, which may include a café and/or tenant amenities (possibly including a childcare center); surface parking lots and parking garages; and associated improvements (the "**Project**").

WHEREAS, on _____, the City Council of the City of San Carlos adopted Ordinance No. ____, approving a Development Agreement by and between City and Owner recorded in the Official Records of San Mateo County at _____ ("**Development Agreement**"), and issued several other approvals identified in the Development Agreement ("**Project Approvals**").

WHEREAS, the Development Agreement requires the Owner (i) to provide the public access to a bike trail on the Property along Pulgas Creek ("**Creek Trail**" or "**Alternative Creek Trail**", as defined in the Development Agreement), (ii) to open to the public at least one café or restaurant in the Project ("**Publicly Accessible Cafe**"), and (iii) to provide public access to certain privately owned, publicly accessible areas within the Project pursuant to Covenants, Agreements, and Deed Restrictions for Privately Owned Publicly Accessible (POPA) Areas ("**POPA Agreement**"). The Development Agreement further requires the Owner to provide

access to parking spaces within one of the Project parking garages for members of the public to park while using the Creek Trail, the privately owned, publicly accessible areas, and the Publicly Accessible Café in the Project, as further specified in Development Agreement.

WHEREAS, the Development Agreement requires Owner and City to execute a parking agreement prior to the issuance of the certificate of occupancy for the first parking garage in the Project (the “**First Parking Garage**”) pursuant to which Owner will provide public access to parking spaces within the First Parking Garage, as further specified in Development Agreement.

WHEREAS, the Parties desire to execute and record this Agreement to make parking within the First Parking Garage available to the public upon the terms and conditions stated below to satisfy the requirements of the Development Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties hereby agree as follows:

1. Parking Terms and Conditions.

1.1 Public Use of Parking. Parking spaces in the First Parking Garage in a number equivalent to three percent (3%) of the parking spaces in the Project’s largest planned parking garage, together with those areas necessary for ingress and egress thereto as more particularly described in **Exhibit B** (collectively, the “**Public Parking Area**”), shall be available during the Hours of Public Use (as defined below) for use by members of the public using that the Creek Trail or Alternative Creek Trail, as applicable, the portion of the Bridge (as defined in the Development Agreement) on the Property, and those Beneficial Project Features that are publicly accessible pursuant to Sections 2.9.2 through 2.9.4 of the Development Agreement (“**Publicly Accessible Project Features**”), subject to Owner’s modification rights as set forth in this Section 1.1. Notwithstanding the foregoing, certain spaces in the Public Parking Area shall be designated for customers of the Publicly Accessible Café and shall be open to such customers during the hours that the Publicly Accessible Café is open to the public. The spaces within the Public Parking Area that are anticipated to be available to members of the public accessing the Publicly Accessible Project Features are conceptually depicted on **Exhibit C** (“**Public Parking Spaces**”). Owner may modify the Public Parking Area, including without limitation the Public Parking Spaces, from time to time, in its sole discretion, so long as the total number of Public Parking Spaces is not reduced, upon providing reasonable advance notice to City of such modifications, provided however, that nothing herein limits the Owner’s obligation to comply with the requirements to obtain building permits and/or City approval in its regulatory capacity of the modifications, if applicable. The Public Parking Spaces, including those spaces designated for the Publicly Accessible Café, shall be marked with conspicuous signage.

1.2 Hours of Public Use. The Public Parking Area shall be open to the members of the public accessing the Publicly Accessible Project Features daily from 8:00 a.m. to 10:00 p.m. (collectively the “**Hours of Public Use**”). At all other times, except during the times that the Publicly Accessible Café is open to the public with respect to those Public Parking Spaces designated for customers of the Publicly Accessible Café, Owner shall have exclusive control over the Public Parking Area for the exclusive use of the Owner, Owner’s tenants, and

the guests, licensees, employees, agents, servants and representatives of Owner and Owner's tenants. Owner shall post conspicuous signs, as approved by the City, in the Public Parking Area to inform the public of the Hours of Public Use and the hours during which the Public Parking Spaces designated for customers of the Publicly Accessible Café may be used by members of the public accessing the Publicly Accessible Project Features.

1.3 *Parking Rates.* Owner shall make the Public Parking Area available at no cost to members of the public accessing the Publicly Accessible Project Features. Owner shall be free to establish parking rates for the other parking areas in the Project in its sole and absolute discretion, and Owner shall have the right to install any access control and fee collection mechanisms it deems necessary or prudent to restrict ingress and egress to and from such other parking areas.

1.4 *Independent Parking Management; Security.* In its sole discretion, Owner may contract with, or grant a concession to, third-party entities to staff, operate, and/or provide security in the Public Parking Area and the other parking areas of the Project.

1.5 *Rules and Regulations.* Owner shall have the right to adopt, amended from time to time, and enforce reasonable rules and regulations relating to use of the Public Parking Area. Such rules and regulations must be posted online and in the Public Parking Area in reasonably conspicuous places. Without limiting the generality of the foregoing, Owner shall have the right to place reasonable restrictions on the time, place, and manner of any organized gatherings in the Public Parking Areas.

2. *Maintenance of Public Parking Area.* During the term of this Agreement, Owner shall maintain the Public Parking Area in good condition. All Public Parking Area improvements shall be repaired or replaced with materials, apparatus and facilities of at least equal quality of the materials, apparatus and facilities at initial construction of the Public Parking Area. Owner may temporarily limit or close the Public Parking Area to perform maintenance, repair and replacement activities.

3. *Term; Termination.* Owner's obligation to make the Public Parking Area available to the public under this Agreement shall commence upon City's issuance of a final certificate of occupancy for the First Parking Garage ("**Effective Date**"). The term of this Agreement shall commence on the Effective Date and shall terminate upon the occurrence of one of the events described in Section 3.1, 3.2, or 3.3 (except as provided in Section 3.3).

3.1 The Project is completely demolished and not reconstructed for reasons other than those set forth in Section 3.2; or

3.2 The Project is damaged or destroyed by a fire, earthquake, explosion, tornado, flood, or hurricane or other casualty (each, a "**Casualty**"), the Project is completely demolished following the Casualty, and the Project is not reconstructed.

3.3 If Owner proposes a substantial change in the Project that is not permitted by the Project Approvals and that would reduce the number of Public Parking Spaces, Owner shall request the City's prior written consent to reduce the number of Public Parking Spaces, which shall not be unreasonably withheld, conditioned or delayed. Owner's request shall include

plans or drawings showing the proposed new configuration and number of the Public Parking Spaces. City shall respond within fifteen (15) business days. If the City responds that the proposed configuration or number of the Public Parking Spaces are unacceptable, City and Owner shall meet and confer for at least thirty (30) days to identify a new configuration or new number of Public Parking Spaces mutually agreeable to the Parties. If the City provides consent and the Planning Commission and/or City Council thereafter approve any necessary land use approvals, Owner and City shall record a memorandum of modification to this Agreement or an amended and restated Agreement confirming the new configuration and number of the Public Parking Spaces, in which case this Agreement shall not terminate (except as otherwise provided in any amended and restated Agreement).

The City Community Development Director is authorized to provide consent on behalf of the City, but such consent shall be subject to the Planning Commission and/or City Council's approval of any necessary land use approvals. It shall be reasonable for the City Community Development Director to refuse consent if, for example, he or she reasonably believes that a lower number of Public Parking Spaces cannot adequately serve the Publicly Accessible Project Features as they may have been modified by later approvals or are proposed to be modified in connection with the proposed substantial change.

4. Insurance. Owner shall obtain and maintain at all times during the Term insurance against claims for injuries to persons or damage to property that may arise out of any manner including (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Public Parking Area, or any part thereof, whether such injury, death, damage or destruction is caused by the person or property of the Owner, representatives, employees or subcontractors. The insurance carrier is required to maintain an A.M. Best rating of not less than "A:-VII."

4.1 Coverages and Limits. Owner, at its sole expense, shall maintain the types of coverages and minimum limits indicated below, unless otherwise approved by City in writing. These minimum amounts of coverage will not constitute any limitations or cap on Owner's indemnification obligations under this Agreement.

a. Commercial General Liability Insurance. Owner shall maintain occurrence-based coverage with limits not less than \$2,000,000 per occurrence. If the submitted policies contain aggregate limits, such limits will apply separately to the Project, or location that is the subject of this Agreement or the aggregate will be twice the required per occurrence limit. The Commercial General Liability insurance policy shall be endorsed to name the City, its officers, agents, employees and volunteers as additional insureds, and to state that the insurance will be primary and not contribute with any insurance or self-insurance maintained by the City.

b. Business Automobile Liability Insurance. Owner shall maintain coverage with limits not less than \$1,000,000 per each accident for owned, hired and non-owned automobiles.

c. Workers' Compensation and Employer's Liability Insurance. Owner shall maintain coverage as required by the California Labor Code and Employer's Liability limits with limits not less than \$1,000,000 per each accident for bodily injury or

disease. The Worker's Compensation policy shall contain an endorsement stating that the insurer waives any right to subrogation against the City, its officers, agents, employees, and volunteers.

4.2 Providing Certificates of Insurance and Endorsements. Prior to City's execution of this Agreement, Owner shall provide to City certificates of insurance and above-referenced endorsements sufficient to satisfaction of City's Risk Manager. In no event shall Owner commence any work under this Agreement until certificates of insurance and endorsements have been accepted by City's Risk Manager.

4.3 Failure to Maintain Coverage. If Owner fails to comply with these insurance requirements, then City will have the option to declare Owner in default.

4.4 Submission of Insurance Policies. City reserves the right to require, at any time, complete copies of any or all required insurance policies and endorsements.

5. Costs. Owner shall be solely liable for the operation, upkeep and maintenance of the Public Parking Area.

6. Mortgagee Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument ("**Mortgage**"); provided, however, that any successor of Owner to the Property shall be bound by this Agreement whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise. Neither City nor Owner shall be permitted to cancel, surrender or materially modify the terms of this Easement Agreement without the consent of any mortgagee of record. Any mortgagee of record shall have the right (but not the obligation) to perform Owner's obligations hereunder. Without limiting the foregoing, in the event of a default on the part of Owner hereunder, each mortgagee that has given notice of its Mortgage to City (each a "**Mortgagee**") shall have the right (but not the obligation) during the same period available to Owner to cure or remedy, or to commence to cure or remedy, the default claimed or the areas of noncompliance set forth in City's notice, provided that Mortgagee shall have an additional fifteen (15) days (with respect to monetary defaults only) or an additional thirty (30) days (with respect to non monetary defaults), or such reasonable period of time beyond thirty (30) days, if such non-monetary default is not susceptible to being cured within such thirty (30) days, beyond the applicable cure period set forth in this Agreement within which to cure or to commence the curing of such default as therein provided during which additional period this Agreement shall remain in full force and effect (nothing contained herein shall obligate a Mortgagee to cure a default, it being understood that any election to cure a default shall be at the Mortgagee's sole option). In case of a default that is not susceptible of being cured by the Mortgagee, this Agreement will remain in full force and effect if Mortgagee institutes proceedings to acquire title to the Property by foreclosure or otherwise, and diligently prosecutes the same to completion. If the Mortgagee, or its nominee, or a purchaser at a foreclosure sale, or by deed in lieu of foreclosure, shall cure all defaults that are susceptible of being cured by such Mortgagee, or by such purchaser, as the case may be, then the defaults of any prior holder of the defaulting Owner's interest hereunder that are not susceptible of being cured by such Mortgagee or by such purchaser shall no longer be deemed to be defaults hereunder. In the event any Mortgage encumbering the Property shall be foreclosed, the Owner

shall remain liable for any defaults under this Agreement existing at the time of any foreclosure, and the successor in title of Owner to the Property shall be responsible only to the extent necessary to bring the Property into current compliance with Owner's obligations under this Agreement, and not for any past uncured defaults. Upon request of any such mortgagee, the City will confirm the provisions hereof in a separate writing in favor of any Mortgagee, along with such changes reasonably requested by such Mortgagee and consented to by the City (not to be unreasonably withheld, conditioned or delayed).

7. Estoppel Certificates. Any Party to this Agreement shall, promptly upon the request of any other Party or any Mortgagee, execute, acknowledge and deliver to or for the benefit of the requesting Party (or Mortgagee, if applicable), at any time, from time to time, and at the expense of the Party (or, if requested by any Mortgagee, Owner) requesting a certificate as herein below described, its certificate certifying (1) that this Easement Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Easement Agreement is in full force and effect, as modified, and stating the modifications), (2) whether there are then existing any charges, offsets or defenses against the enforcement of any agreement, covenant or condition hereof on the part of the Party requesting (or, if requested by a Mortgagee, Owner) the certificate to be performed or observed (and, if so, specifying the same), (3) whether there are then existing any defaults on the part of the Party requesting the certificate (or, if requested by a Mortgagee, Owner) known to the Party delivering the certificate in the performance or observance of any agreement, covenant or condition hereof to be performed or observed and whether any notice has been given of any default that has not been cured (and, if so, specifying the same), and (4) any other matters reasonably requested.

8. Indemnification. Owner, to the fullest extent permitted by law, shall indemnify, defend (with counsel reasonably acceptable to City), and hold harmless the City, its officers, elected and appointed officials, agents, contractors, representatives and employees (each individually a "**City Party**" and, collectively, the "**City Parties**") from and against any and all third party suits or actions at law or in equity, liabilities, claims, obligations, losses, demands, penalties, fines, liens, judgments, damages, costs, and expenses (including reasonable attorneys' fees) (collectively, "**Claims**") including, but not limited to, Claims for bodily injury, sickness, disease or death of any person or damage to real or personal property, tangible or intangible arising directly or indirectly from the acts, omissions, negligence or willful misconduct of Owner or its contractors, subcontractors, agents or employees (each an "**Owner Party**" and collectively the "**Owner Parties**") in connection with the design, operation, or maintenance of the Public Parking Area or performance or failure to perform Owner's obligations under this Agreement. Owner's indemnity obligations under this Section shall not extend to Claims to the extent that any such Claims are the result of the gross negligence or willful misconduct of a City Party. The Owner's duty to indemnify and hold harmless City includes the duty to defend as set forth in Civil Code section 2778. Owner's indemnification obligations under this Section shall survive termination of this Agreement until such time as the statute of limitations periods for Claims that arose prior to termination expiration or termination has run.

9. Subordination. Owner shall cause the beneficiary of any Mortgage recorded against the Public Parking Area as of the recordation date hereof to subordinate the lien of its Mortgage to this Agreement within sixty (60) days following the effective date of this Agreement, with the form of subordination agreement substantially as set forth on the Lender

Consent and Subordination page immediately following the signature page hereof, or such other form as is reasonably approved by the City Attorney.

10. Notices. Any notices required or permitted hereunder shall be in writing and shall be served on the Parties at the addresses set forth below. Each such notice shall be either sent by: (a) overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered upon receipt or refusal of delivery; (b) by sending the same to such Party by registered or certified mail, return receipt requested, with postage prepaid, in which case notice shall be deemed delivered upon receipt or refusal of delivery; or (c) personal delivery, in which case notice shall be deemed delivered upon receipt or refusal of delivery. A Party's address may be changed by written notice to the other Parties. Notice given by counsel shall be deemed given by the Party represented by such counsel.

If to City:

City of San Carlos
600 Elm Street
San Carlos, California 94070
Attn: City Manager

With copies to:

City of San Carlos
600 Elm Street
San Carlos, California 94070
Attn: City Attorney

and

City of San Carlos
600 Elm Street
San Carlos, CA 94070
Attn: CDD Director

If to Owner:

With a copy to:

11. Amendments. This Agreement may not be amended, modified, and/or removed unless otherwise approved and agreed upon by a written agreement between City and Owner (or subsequent owner of the Project), and recorded with the County Recorder's Office.

12. Successors and Assigns. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of each of the Parties hereto, and their respective heirs, legal representatives, successors and assigns.

13. Force Majeure. The time within which Owner shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes; lock-outs; Acts of God; severe and unsafe weather; unavailability of materials or labor by reason of regulations or order of any governmental or regulatory body; unavailability of labor for any other reason beyond the reasonable control of the Party seeking the delay; changes in local, state or federal laws or regulations, any development moratorium, or any action of other public agencies that regulate land use, development or the provision of services when any of the foregoing prevents, prohibits or delays construction of the Project; enemy action; riots; insurrections; civil disturbances; wars; terrorist acts; fire; unavoidable casualties; natural disasters; emergency declarations; epidemics; pandemics; government mandated shutdowns; litigation involving this Agreement or the Project Approvals (as defined in the Development Agreement); any other cause beyond the reasonable control of Owner that substantially interferes with carrying out the development of the Project; or the occurrence of any of the following events: (a) the governmental offices where any action required under this Agreement (collectively, "**Government Offices**") are not open for business and any Government Offices' systems are not operational such that such action cannot occur; (b) any other third party is not open for business such that its services required as necessary for a Party to perform obligations under this Agreement cannot be performed; (c) overnight couriers are not operating such that any documents cannot be delivered to the extent such documents are required to be originals; or (d) financial institutions or wire transfer systems are not operating, such that, as part of consummation of financial transactions contemplated hereby cannot occur) (each of the events described in (a) through (d), a "**Government Closure**" (collectively, "**Force Majeure Events**"). Such extension(s) of time shall not constitute a default under this Agreement and shall occur at the request of any Party. For the avoidance of doubt, none of the foregoing is Force Majeure Event: (1) a decline in market conditions; (2) economic recessions; (3) inability to obtain credit or financing; or (4) the appointment of a receiver to take possession of the assets of Owner, an assignment by Owner, for the benefit of creditors, or any other action taken or suffered by Owner under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute.

14. Entire Agreement; Integration. This Agreement and the Development Agreement contain the entire understanding and agreement of the Parties regarding the subject matter hereof and supersede all prior agreements and understandings of the Parties, oral and written, with respect to the subject matter hereof. The Parties acknowledge that this Agreement has been executed pursuant to the terms of the Development Agreement and that Sections 2.9.1 and 2.9.5 and the last sentence of Section 2.9.3 and of the Development Agreement are incorporated herein by this reference

15. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of the Public Parking Area or any other portion of Owner's Property to the general public or for any public purpose whatsoever, it being the intention of the Parties that this Agreement shall be limited to and for the purposes herein expressed. Owner shall reserve the right to record and/or post notices pursuant to Civil Code Sections 813 and/or 1008 with regard to the Public Parking Area.

16. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

17. Severability. If any of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision(s) shall be deemed severable from the remaining provision(s) contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable item had never been contained herein.

18. Recordation. This Agreement shall be recorded in the Official Records of the County of San Mateo following execution by the Parties.

19. No Partnership, Co-venture, or Principal-Agent Relationship. Nothing in this Agreement is intended to or does establish the Parties hereto as partners, coventurers, or principal and agent with one another.

20. No Third-Party Beneficiaries. Nothing in this Agreement shall provide any benefit to any third party (including but not limited to members of the public) or entitle any third party to any claim, cause of action, remedy or right of any kind.

21. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the Parties execute this Agreement as of the date set forth above.

OWNER:

ARE-SAN FRANCISCO NO. 88, LLC,
a Delaware limited liability company

By: Alexandria Real Estate Equities, L.P.,
a Delaware limited partnership,
managing member

By: ARE-QRS Corp.,
a Maryland corporation,
general partner

By: _____

[City Signatures Follow]

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signature: _____ (seal)

CITY:

CITY OF SAN CARLOS,
a California municipal corporation

By: _____
Jeff Maltbie, City Manager

ATTESTATION:

By: Crystal Mui, City Clerk

APPROVED AS TO FORM:

By: Gregory J. Rubens, City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signature: _____ (seal)

Recording Requested by and
When Recorded Return to:

Exempt from Recording Fees per Govt. Code §§ 6103 and 27383
This Line for Recorder's Use Only

Space above

LENDER SUBORDINATION AND CONSENT

_____, with an office at _____, and its successors and assigns
 (“**Beneficiary**”), is the beneficiary under that certain [*Insert name and recording info of recorded loan document, such as:* Deed of Trust, Security Agreement and Fixture Filing (with Assignment of Rents and Leases) executed by _____, as Trustor, dated as of _____ and recorded on _____ in the Official Records of San Mateo County, California (the “**Official Records**”) as Document No. _____ (the “**Deed of Trust**”).

The Deed of Trust encumbers the real property described as the “**Property**” in the Public Parking Agreement (the “**Agreement**”) to which this Subordination and Consent of Lender is attached and made a part. As the beneficiary under the said Deed of Trust, Beneficiary hereby consents to the execution and recordation of the Agreement and agrees that upon recordation of the Agreement in the Official Records, Beneficiary’s interests in the Property and rights under the Deed of Trust shall be subject and subordinate to the Agreement.

Dated _____, 20__

[Lender],

a _____

By: _____

Name: _____

Title: _____

[Signature must be notarized.]

EXHIBIT H **IMPACT FEES**

All terms not defined herein shall have the meaning ascribed to them in the Development Agreement to which this Exhibit H is attached to and a part thereof.

The following Impact Fees shall apply to the Project as provided in Section 3.6.3 of this Development Agreement:

Impact Fee	Calculator	Escalator
Commercial Linkage fee (Chapter 8.51 of the San Carlos Municipal Code)	\$20 per square foot of office and research & development space	N/A
Sewer fees (connection and capacity) (Chapter 13.04 of the San Carlos Municipal Code)	\$7,510 for the first 100 galls per day of estimated wastewater discharge + \$75 per each subsequent 1 gallon per day of estimated wastewater discharge	The sewer capacity charge shall be adjusted annually based on the change in the Engineering News-Record Construction Cost Index (20-Cities Average) from the March 2016 Index
Traffic impact fee (Chapter 8.50 of the San Carlos Municipal Code)	Impact Fee in effect at time Agreement Date for all uses other than Office/R&D uses. For example, the Impact Fee for retail, restaurant, manufacturing, and warehousing are as follows: Retail: \$28,487.37 per 1,000 square feet; Restaurant: \$73,050.29 per 1,000 square feet; Manufacturing: \$5,009.59 per 1,000 square feet; Warehousing: \$1,420.63 per 1,000 square feet.	Escalator in effect on Agreement Date for all uses other than Office/R&D uses. Escalator in effect on Agreement Date or escalator in Revised Traffic Impact Fee.

Impact Fee	Calculator	Escalator
Traffic impact fee, continued	<p>For Office/R&D uses, Existing Traffic Impact Fee or fee in Revised Traffic Impact Fee, as applicable, in no event to exceed one hundred and fifty percent of Existing Traffic Impact Fee. For reference, currently the Existing Traffic Impact Fee is as follows for the following uses:</p> <p>Research & Development: \$3,663.73 per 1,000 square feet</p> <p>Office: \$8,598.55 per 1,000 square feet</p>	
Child Care impact fee (Chapter 8.52 of the San Carlos Municipal Code)	Office/Research & Development: \$5.03 per square foot, subject to credit if onsite child care is provided	Adjusted annually based on the Construction Cost Index published by the Engineering News Record or a reasonable replacement index

EXHIBIT I

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

[ATTACHED]

Recording Requested by and
When Recorded Return to:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**ASSIGNMENT AND ASSUMPTION AGREEMENT -
DEVELOPMENT AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (“**Agreement**”) is made and entered into as of _____, 20__, by and between _____, a _____ company (“**Assignor**”), and _____, a _____ company (“**Assignee**”).

RECITALS

A. Assignor owns that real property located in the City of San Carlos (“**City**”), County of San Mateo, State of California, and more particularly described in Exhibit A attached hereto (the “**Property**”).

B. On the date hereof, Assignee is acquiring approximately __ acres of the Property as more particularly described in Exhibit B attached hereto (the “**Assigned Property**”).

C. The City and ARE-SAN FRANCISCO NO. 88, LLC, a Delaware limited liability company, entered into that certain Development Agreement dated as of _____, 202_ and recorded against the Property on _____, 202_ as Instrument No. _____ in the San Mateo County Recorder’s Office (the “**Development Agreement**”).

D. Assignor desires to assign to Assignee all of Assignor’s rights, duties and obligations under the Development Agreement with respect to the Assigned Property only (excluding, however, Assignor’s obligations with respect to the construction of and/or payment for certain infrastructure and other project-wide items specified in Exhibit C, attached hereto (the “**Assignor Retained Obligations**”), for which Assignor remains responsible) (the “**Assigned Rights and Obligations**”), and Assignee desires to accept and assume Assignor’s rights and obligations under the Development Agreement with respect to the Assigned Property only (the “**Assumed Rights and Obligations**”), such assignment and assumption to be effective on the Effective Date (as defined in Section 1.3 below). The Assigned Rights and Obligations and the Assumed Rights and Obligations are referred to collectively herein as the “**Assigned Property Rights and Obligations**”.

NOW THEREFORE, in consideration of these promises, and of the agreements, covenants and conditions contained in this Agreement and other good and valuable consideration, the parties agree as follows:

ARTICLE 1

ASSIGNMENT AND ASSUMPTION OF THE ASSIGNED PROPERTY RIGHTS AND OBLIGATIONS

1.1 Assignment. Assignor assigns to Assignee, as of the Effective Date (as defined in Section 1.3 below), all of Assignor's rights, title and interest in and to the Assigned Property Rights and Obligations.

1.2 Assumption. As of the Effective Date, Assignee accepts Assignor's assignment of the Assigned Rights and Obligations and assumes the Assumed Rights and Obligations. From and after the Effective Date, Assignee shall keep and perform all covenants, conditions and provisions of the Development Agreement relating to the Assigned Property.

1.3 Effective Date. For purposes of this Agreement, the "Effective Date" shall be the later to occur of (1) the date on which the deed from Assignor to Assignee for the Assigned Property is recorded in the Office of the Recorder of the County of San Mateo; or (2) the date of the execution of this Agreement by all parties; provided, however, that this Agreement shall have no force and effect without the written approval of the City, as evidenced by the full execution by the City's representatives of the form entitled City of San Carlos's Consent, attached hereto as Exhibit D.

1.4 Timing Obligations. Nothing in this Agreement shall be deemed to relieve any party of the timing obligations established in the Development Agreement

ARTICLE 2

RIGHTS AND REMEDIES

2.1 Assignor's Release; No Assignor Liability or Default for Assignee Breach. Pursuant to Section 9.2 of the Development Agreement, Assignor shall be released from the Development Agreement with respect to the Assigned Property and the Assumed Rights and Obligations as of the Effective Date. Any default or breach by Assignee under the Development Agreement following the Effective Date with respect to the Assigned Property or the Assumed Rights and Obligations ("Assignee Breach") shall not constitute a breach or default by Assignor under the Development Agreement and shall not result in (a) any remedies imposed against Assignor, or (b) modification or termination of the Development Agreement with respect to that portion of the Property retained by Assignor after the conveyance of the Assigned Property, if any (the "Assignor Property").

2.2 No Assignee Liability or Default for Assignor Breach. As of the Effective Date, any default or breach by Assignor under the Development Agreement prior to or after the Effective Date ("Assignor Breach"), shall not constitute a breach or default by Assignee under the Development Agreement, and shall not result in (a) any remedies imposed against Assignee,

including without limitation any remedies authorized in the Development Agreement, or (b) modification or termination of the Development Agreement with respect to the Assigned Property.

ARTICLE 3

PERIODIC REVIEW OF COMPLIANCE

3.1 Assignor Responsibilities. Assignor shall participate in the annual review of the Development Agreement conducted pursuant to Section 65865.1 of the California Government Code with respect to the Assignor Property, and Assignee shall have no responsibility therefor.

3.2 Assignee Responsibilities. Assignee shall participate in the annual review of the Development Agreement conducted pursuant to Section 65865.1 of the California Government Code with respect to the Assigned Property, and Assignor shall have no responsibility therefor.

ARTICLE 4

AMENDMENT OF THE DEVELOPMENT AGREEMENT

4.1 Assignor. Assignor shall not request, process or consent to any amendment to the Development Agreement that would affect the Assigned Property or the Assigned Property Rights and Obligations without Assignee's prior written consent, which consent shall not be withheld unreasonably. The foregoing notwithstanding, Assignor may process any amendment that does not affect the Assigned Property, and, if necessary, Assignee shall consent thereto and execute all documents necessary to accomplish said amendment, provided that said amendment does not adversely affect the Assigned Property or any of Assignee's Assigned Property Rights and Obligations pursuant to the Development Agreement.

4.2 Assignee. Assignee shall not request, process or consent to any amendment to the Development Agreement that would affect the Assignor Property or the Assignor's remaining rights and obligations pursuant to the Development Agreement without Assignor's prior written consent, which consent shall not be withheld unreasonably. The foregoing notwithstanding, Assignee may process any amendment that does not affect the Assignor Property or any of Assignor's remaining rights and obligations pursuant to the Development Agreement, and, if necessary, Assignor shall consent thereto and execute all documents necessary to accomplish said amendment.

ARTICLE 5

GENERAL PROVISIONS

5.1 Notices. All notices, invoices and other communications required or permitted under this Agreement shall be made in writing, and shall be delivered either personally (including by private courier) or by nationally recognized overnight courier service to the following addresses, or to such other addresses as the parties may designate in writing from time to time:

If to Assignee:

with copies to:

If to Assignor:

with a copies to:

Notices personally delivered shall be deemed received upon delivery. Notices delivered by courier service as provided above shall be deemed received twenty-four (24) hours after the date of deposit. From and after the Effective Date and until further written notice from Assignee to the City pursuant to the terms of the Development Agreement, Assignee hereby designates as its notice address for notices sent by the City pursuant to Section 11.3 of the Development Agreement, the notice address set forth above.

5.2 Estoppel Certificates. Within ten (10) days after receipt of a written request from time to time, either party shall execute and deliver to the other, or to an auditor or prospective lender or purchaser, a written statement certifying to that party's actual knowledge: (a) that the Development Agreement is unmodified and in full force and effect (or, if there have been modifications, that the Development Agreement is in full force and effect, and stating the date and nature of such modifications); (b) that there are no current defaults under the Development Agreement by the City and either Assignor or Assignee, as the case may be (or, if defaults are asserted, so describing with reasonable specificity) and that there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default; (c) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, and stating the date and nature of such modifications); and (d) such other matters as may be reasonably requested.

5.3 Attorneys' Fees. In the event of any legal or equitable proceeding in connection with this Agreement, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees, costs and disbursements paid or incurred in good faith at the arbitration, pre-trial, trial and appellate levels, and in enforcing any award or judgment granted pursuant thereto.

5.4 No Waiver. No delay or omission by either party in exercising any right, remedy, election or option accruing upon the noncompliance or failure of performance by the other party under the provisions of this Agreement shall constitute an impairment or waiver of

any such right, remedy, election or option. No alleged waiver shall be valid or effective unless it is set forth in a writing executed by the party against whom the waiver is claimed. A waiver by either party of any of the covenants, conditions or obligations to be performed by the other party shall not be construed as a waiver of any subsequent breach of the same or any other covenants, conditions or obligations.

5.5 Amendment. This Agreement may be amended only by a written agreement signed by both Assignor and Assignee, and subject to obtaining the City's consent.

5.6 Successors and Assigns. This Agreement runs with the land and shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

5.7 No Joint Venture. Nothing contained herein shall be construed as creating a joint venture, agency, or any other relationship between the parties hereto other than that of assignor and assignee.

5.8 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the full extent permitted by law; provided that, if the invalidation or unenforceability would deprive either Assignor or Assignee of material benefits derived from this Agreement or make performance under this Agreement unreasonably difficult, then Assignor and Assignee shall meet and confer and shall make good faith efforts to modify this Agreement in a manner that is acceptable to Assignor, Assignee and the City.

5.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

5.10 Third Party Beneficiaries. Assignor and Assignee acknowledge that the City is a third party beneficiary of the terms and conditions of this Agreement to the extent necessary for City to enforce the terms and conditions of the Development Agreement. This Agreement shall not be deemed or construed to confer any rights, title or interest, including without limitation any third party beneficiary status or right to enforce any provision of this Agreement, upon any person or entity other than Assignor, Assignee and the City.

5.11 Time of the Essence. Time is of the essence in the performance by each party of its obligations under this Agreement.

5.12 Authority. Each party represents that the individuals executing this Agreement on behalf of such Party have the authority to bind his or her respective party to the performance of its obligations hereunder and that all necessary board of directors', shareholders', partners' and other approvals have been obtained.

5.13 Term. The term of this Agreement shall commence on the Effective Date and shall expire upon the expiration or earlier termination of the Development Agreement, subject to any obligations under the Development Agreement that expressly survive the expiration or

termination of the Development Agreement. Upon the expiration or earlier termination of this Agreement, the parties shall have no further rights or obligations hereunder, except with respect to any obligation to have been performed prior to such expiration or termination or with respect to any default in the performance of the provisions of this Agreement which occurred prior to such expiration or termination or with respect to any obligations which are specifically set forth as surviving this Agreement or the Development Agreement.

5.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

5.15 Default. Any failure by either party to perform any material term or provision of this Agreement shall constitute a default (a) if such defaulting party does not cure such failure within thirty (30) days following written notice of default from the other party, where such failure is of a nature that can be cured within such thirty (30) day period, or (b) if such default is not of a nature that can be cured within such thirty (30) day period, if the defaulting party does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence the curing of such failure. Any notice of default given hereunder shall be given in the same manner as provided in Section 5.1 hereof and shall specify in detail the nature of the failures in performance that the noticing party claims and the manner in which such failure can be satisfactorily cured.

[remainder of page left intentionally blank – signature pages follow]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement by proper persons thereunto duly authorized, to be effective as of the Effective Date.

“Assignor”

_____,
a _____ company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

“Assignee”

_____,
a _____ company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 20__ before me, _____
Notary Public (insert name and title of the officer),

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

[Seal]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 20__ before me, _____
Notary Public (insert name and title of the officer),

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

[Seal]

EXHIBIT A
Description of the Property
(Attached)

EXHIBIT B

Description of the Assigned Property

(Attached)

EXHIBIT C

List of Assignor Retained Obligations

(Attached)

EXHIBIT D

CONSENT OF CITY OF SAN CARLOS

The City of San Carlos hereby consents to the assignment and assumption of the Assigned Property Rights and Obligations as set forth in this Agreement and agrees to the terms and conditions set forth herein.

CITY OF SAN CARLOS,
a California Municipal corporation

By: _____

EXHIBIT J

FORM OF BRIDGE EASEMENT AND MAINTENANCE AGREEMENT

[ATTACHED]

**RECORDING REQUESTED BY AND
AFTER RECORDING RETURN TO:**

City of San Carlos

San Carlos, CA

Exempt from Recording Fee Per Gov Code 6103,
27383

Space above this line for Recorder's Use

APN: 046-162-070 and 146-062-060

DOCUMENTARY TRANSFER TAX is \$0.

NO CONSIDERATION.

Property is not sold. This instrument is being
recorded merely to confirm the use of the
property.

BRIDGE EASEMENT AND MAINTENANCE AGREEMENT

This Bridge Easement and Maintenance Agreement (“**Easement Agreement**” or “**Agreement**”)) is made and entered into on this ____ day of _____ (“**Easement Agreement Effective Date**”), by and between _____ (“**Owner**”), and the CITY OF SAN CARLOS, a charter city and California municipal corporation (“**City**”) (each individually a “**Party**”) and together, the “**Parties**”).

R E C I T A L S

A. Owner is the owner of that certain real property consisting of approximately __ acres located within the City of San Carlos (“**City**”), County of San Mateo, State of California, designated as APN _____ and depicted in Exhibit “A”, attached hereto and incorporated herein by reference (the “**Property**”).

B. The Property is connected to 930-1030 Brittan Avenue (“**Brittan Property**”) in the City via an existing bridge (“**Bridge**”) over Pulgas Creek that is located partially on the Property and partially on the Brittan Property, as depicted in Exhibit “B”, attached hereto and incorporated herein by reference.

B. The Property is part of a larger approximately 25.34-acre property being developed as 1,630,000 square feet of gross floor area of Class A office/research and development buildings, which may include a café and/or tenant amenities (possibly including a childcare center); surface parking lots and parking garages; and associated improvements (the “**Project**”).

C. On _____, the City Council of the City of San Carlos adopted Ordinance No. ____, approving a Development Agreement by and between City and Owner recorded in the Official Records of San Mateo County at _____, (“**Development Agreement**”) and issued several other approvals for the Project identified in the Development Agreement.

D. The Development Agreement contemplates, among other things, that if Owner is able to enter into an agreement with the owner of Brittan Property (“**Brittan Owner**”) prior to the issuance of the first certificate of occupancy for any building in Phase I (as defined in the Development Agreement) of the Project other than a parking garage (“**First Phase I Building COO**”) to allocate maintenance responsibility for the Bridge between Owner and Brittan Owner, then prior to issuance of the First Phase I Building COO, Owner shall grant City a non-exclusive easement for the limited purpose of public pedestrian and bicycle access on the portion of the Bridge located within the Property.

E. Prior to the issuance of the First Phase I Building COO, Owner and Brittan Owner entered into an agreement to allocate maintenance responsibility for the Bridge between Owner and Brittan Owner.

F. City and Owner now desire that Owner grant to City an easement for public pedestrian and bicycle access to the portion of the Bridge located within the Property, in the area legally described and shown in Exhibit “C”, attached hereto and incorporated herein by reference (“**Bridge Easement Area**”), as a privately owned, publicly accessible space, and provide for the maintenance of the portion of the Bridge located within the Bridge Easement Area as set forth below.

AGREEMENT

NOW, THEREFORE, the Parties hereby incorporate the above recitals by this reference and agree as follows:

1. Grant of Bridge Easement. For valuable consideration, including the benefits and rights conferred upon Owner under the Project Approvals (as defined in the Development Agreement) and subject to the terms of this Easement Agreement, Owner hereby grants and dedicates to the City a non-exclusive easement for use and enjoyment by the general public on, over and across the portion of the Bridge located in the Bridge Easement Area for purposes of walking, cycling, jogging, running, roller blading, skateboarding, roller skating, and similar non-automotive recreational activities (“**Bridge Easement**”). This grant of the Bridge Easement conveys no rights affecting the use of Owner’s lands that are not included in the Bridge Easement Area, and Owner reserves all right to lands within the Property outside the Bridge Easement Area.

2. Operating Hours. The portion of the Bridge located within the Bridge Easement Area shall be publicly accessible from thirty (30) minutes prior to sunrise to thirty (30) minutes prior to sunset, seven (7) days a week, except for closures permitted in Section 4.

3. Rules and Regulations. Owner shall have the right to adopt, amend from time to time, and enforce reasonable rules and regulations relating to use of the Bridge Easement Area, including for purposes of public health, safety and security and to avoid interference with commercial operations at the Project. Owner shall provide City notice of such rules and post signs with the rules and regulations online and in a conspicuous location in, on, or immediately adjacent to the Bridge Easement Area. Without limiting the generality of the foregoing, Owner shall have the right to place reasonable restrictions on the time, place, and manner of any organized gatherings in the Bridge Easement Area and

the right to reasonably restrict the use of motorized means of transportation within the Bridge Easement Area.

4. Maintenance. During the term of this Agreement, Owner shall maintain, or cause to be maintained, the portion of the Bridge located within the Bridge Easement Area in good condition and in accordance with applicable law. The portion of the Bridge within the Bridge Easement Area shall be repaired or replaced with materials, apparatus and facilities of at least equal quality of the materials, apparatus and facilities at initial construction of the portion of the Bridge within the Bridge Easement Area. Owner may temporarily limit or close the Bridge Easement Area, or permit such limitations or closures, to perform maintenance, repair and replacement activities on the Bridge Easement Area, the portion of the Bridge within the Easement Area, or adjacent buildings and Project improvements. Without limiting the foregoing, Owner agrees to utilize diligent good faith efforts to ensure that any maintenance, repair or other work is undertaken expeditiously and in a manner that minimizes any adverse impacts on any of the rights under this Easement Agreement. Owner shall erect, or cause to be erected, appropriate signage and safety barriers to notify the public of any restriction on public use of the Bridge Easement Area and/or the portion of the Bridge within the Bridge Easement Area during repairs, replacements, upgrades, and modifications of such portion of the Bridge or any adjacent buildings and/or Project improvements. In no event shall Owner have any obligation under this Easement Agreement to improve or maintain the portion of the Bridge located on the Brittan Property.

5. Future Modifications. Should Owner desire to modify the Bridge Easement Area and/or design, location, and/or configuration of the portion of the Bridge within the Bridge Easement Area, Owner shall submit applications to City for all necessary permits in accordance with applicable law and the Development Agreement.

6. Default and Remedies. Breach of, failure, or delay by either Party to perform any term or condition of this Easement Agreement shall constitute a default. In the event of any default of any term, condition, or obligation of this Easement Agreement, the non-defaulting Party shall give the defaulting Party notice in writing specifying the nature of the alleged default and the manner in which such default may be satisfactorily cured (“**Notice of Breach**”). The defaulting Party shall cure the default within 90 days following receipt of the Notice of Breach, provided, however, if the nature of the alleged default is non-monetary and such that it cannot reasonably be cured within such 90-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure, provided that if the cure is not diligently prosecuted to completion, then no additional cure period shall be provided. If the alleged failure is cured within the time provided above, then no default shall exist, and the non-defaulting Party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a default shall exist under this Easement Agreement and the non-defaulting Party may bring any action at law or in equity to enforce the terms of this Easement Agreement.

7. Term. This Easement Agreement will commence on the Easement Agreement Effective Date. Owner’s obligation to make the Bridge Easement Area available to the public under this Easement Agreement shall commence upon the last to occur of completion of the Creek Trail or Alternative Creek Trail (each as defined in the Development Agreement), as applicable, and confirmation that the Bridge is safe for public access and shall terminate as provided in Section 8. Notwithstanding the foregoing, upon forty-eight (48) hours’ prior written notice to City, Owner may temporarily limit or close the Bridge Easement Area to perform construction activities on the Bridge Easement Area, the portion of the Bridge within the Bridge Easement Area, the Creek Trail Easement Area, the Creek Trail Improvements, or adjacent buildings and Project improvements.

8. Termination. This Easement Agreement shall terminate in the event that City grants consent to termination in its sole and absolute discretion or in the event that any of the following occur: (a) the Project is damaged or destroyed by a fire, earthquake, explosion, tornado, flood, or hurricane or other casualty (each, a “**Casualty**”), the Project is completely demolished following the Casualty, and the Project is not reconstructed; (b) all or a material portion of the Property is acquired by a public entity exercising its power of eminent domain or under threat of condemnation; or (c) the Pulgas Creek no longer exists and the Bridge in the Bridge Easement Area is not connected to segments of the Creek Trail or segments of another trail for public use that is constructed by the City or any private developer or developers as a condition of approval for a project or projects on neighboring properties. In the event of termination of this Easement Agreement, City and Owner shall promptly execute, acknowledge and record in the County Records a quitclaim or notice of termination of the Bridge Easement.

9. Subordination. Owner shall cause the mortgagee or beneficiary under any mortgage or deed of trust or similar financing instrument recorded against the Property (each, a “**Mortgage**”) as of the recordation date hereof to subordinate the lien of its Mortgage to this Agreement within sixty (60) days following the effective date of this Agreement. The form of subordination agreement shall be substantially as set forth on the Lender Consent and Subordination page immediately following the signature page hereof, or such other form as is reasonably approved by the City Attorney.

10. Mortgagee Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument (“**Mortgage**”); provided, however, that any successor of Owner to the Property shall be bound by this Agreement whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise. Neither City nor Owner shall be permitted to cancel, surrender or materially modify the terms of this Easement Agreement without the consent of any mortgagee of record. Any mortgagee of record shall have the right (but not the obligation) to perform Owner's obligations hereunder. Without limiting the foregoing, in the event of a default on the part of Owner hereunder, each mortgagee that shall have given notice of its Mortgage to City (each a “**Mortgage**”), shall have the right (but not the obligation) during the same period available to Owner to cure or remedy, or to commence to cure or remedy, the default claimed or the areas of noncompliance set forth in City's notice, provided that Mortgagee shall have an additional fifteen (15) days (with respect to monetary defaults only) or an additional thirty (30) days (with respect to non monetary defaults), or such reasonable period of time beyond thirty (30) days, if such non-monetary default is not susceptible to being cured within such thirty (30) days, beyond the applicable cure period set forth in this Agreement within which to cure or to commence the curing of such default as therein provided during which additional period this Agreement shall remain in full force and effect (nothing contained herein shall obligate a Mortgagee to cure a default, it being understood that any election to cure a default shall be at the Mortgagee's sole option). In case of a default that is not susceptible of being cured by the Mortgagee, this Agreement will remain in full force and effect if Mortgagee institutes proceedings to acquire title to the Property by foreclosure or otherwise, and diligently prosecutes the same to completion. If the Mortgagee, or its nominee, or a purchaser at a foreclosure sale, or by deed in lieu of foreclosure, shall cure all defaults that are susceptible of being cured by such Mortgagee, or by such purchaser, as the case may be, then the defaults of any prior holder of the defaulting Owner's interest hereunder that are not susceptible of being cured by such Mortgagee or by such purchaser shall no longer be deemed to be defaults hereunder. In the event any Mortgage encumbering the Property shall be foreclosed, the Owner shall remain liable for any defaults under this Agreement existing at the time of any foreclosure, and the successor in title of Owner to the Property shall be responsible only to the extent necessary to bring the Property into current compliance with Owner's obligations under this Agreement, and not for any past uncured defaults. Upon request of any

such mortgagee, the City will confirm the provisions hereof in a separate writing in favor of any Mortgagee, along with such changes reasonably requested by such Mortgagee and consented to by the City (not to be unreasonably withheld, conditioned or delayed).

11. Insurance. Owner shall obtain and maintain at all times during the Term insurance against claims for injuries to persons or damage to property which may arise out of any manner including (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Bridge Easement Area, or any part thereof, whether such injury, death, damage or destruction is caused by the person or property of the Owner, representatives, employees or subcontractors. The insurance carrier is required to maintain an A.M. Best rating of not less than "A-:VII".

11.1 Coverages and Limits. Owner, at its sole expense, shall maintain the types of coverages and minimum limits indicated below, unless otherwise approved by City in writing. These minimum amounts of coverage will not constitute any limitations or cap on Owner's indemnification obligations under this Easement Agreement.

a. Commercial General Liability Insurance. Owner shall maintain occurrence-based coverage with limits not less than \$2,000,000 per occurrence. If the submitted policies contain aggregate limits, such limits will apply separately to the project, or location that is the subject of this Easement Agreement or the aggregate will be twice the required per occurrence limit. The Commercial General Liability insurance policy shall be endorsed to name the City, its officers, agents, employees and volunteers as additional insureds, and to state that the insurance will be primary and not contribute with any insurance or self-insurance maintained by the City.

b. Business Automobile Liability Insurance. Owner shall maintain coverage with limits not less than \$1,000,000 per each accident for owned, hired and non-owned automobiles.

c. Workers' Compensation and Employer's Liability Insurance. Owner shall maintain coverage as required by the California Labor Code and Employer's Liability limits with limits not less than \$1,000,000 per each accident for bodily injury or disease. The Worker's Compensation policy shall contain an endorsement stating that the insurer waives any right to subrogation against the City, its officers, agents, employees, and volunteers.

11.2 Providing Certificates of Insurance and Endorsements. Prior to City's execution of this Easement Agreement, Owner shall provide to City certificates of insurance and above-referenced endorsements sufficient to satisfaction of City's Risk Manager. In no event shall Owner commence any work under this Easement Agreement until certificates of insurance and endorsements have been accepted by City's Risk Manager.

11.3 Failure to Maintain Coverage. If Owner fails to comply with these insurance requirements, then City will have the option to declare Owner in default.

11.4 Submission of Insurance Policies. City reserves the right to require, at any time, complete copies of any or all required insurance policies and endorsements.

11.5 Indemnification. Owner, to the fullest extent permitted by law, shall indemnify, defend (with counsel reasonably acceptable to City), and hold harmless the City, its officers, elected and appointed officials, agents, contractors, representatives and employees, (each, individually a "**City Party**" and collectively the "**City Parties**"), from and against any and all third party suits or actions at

law or in equity, liabilities, claims, obligations, losses, demands, penalties, fines, liens, judgments, damages, costs, and expenses (including reasonable attorneys' fees) ("**Claims**") including, but not limited to, Claims for bodily injury, sickness, disease or death of any person or damage to real or personal property, tangible or intangible, arising directly or indirectly from the acts, omissions, negligence or willful misconduct of Owner or its contractors, subcontractors, agents, or employees (each an "**Owner Party**" and collectively the "**Owner Parties**") in connection with the design, operation, or maintenance of the portion of the Bridge within the Bridge Easement Area or performance or failure to perform Owner's obligations under this Agreement. Owner's indemnity obligations under this Section shall not extend to Claims to the extent that any such Claims are the result of the gross negligence or willful misconduct of a City Party. The Owner's duty to indemnify and hold harmless City includes the duty to defend as set forth in Civil Code section 2778. Owner's indemnification obligations under this Section shall survive the termination of this Easement Agreement until such time as the statute of limitations periods for Claims that arose prior to termination expiration or termination has run.

12. **Estoppel Certificates.** Any Party to this Easement Agreement shall, promptly upon the request of any other Party or any Mortgagee, execute, acknowledge and deliver to or for the benefit of the requesting Party (or Mortgagee, if applicable), at any time, from time to time, and at the expense of the Party (or, if requested by any Mortgagee, Owner) requesting a certificate as herein below described, its certificate certifying (1) that this Easement Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Easement Agreement is in full force and effect, as modified, and stating the modifications), (2) whether there are then existing any charges, offsets or defenses against the enforcement of any agreement, covenant or condition hereof on the part of the Party requesting (or, if requested by a Mortgagee, Owner) the certificate to be performed or observed (and, if so, specifying the same), (3) whether there are then existing any defaults on the part of the Party requesting the certificate (or, if requested by a Mortgagee, Owner) known to the Party delivering the certificate in the performance or observance of any agreement, covenant or condition hereof to be performed or observed and whether any notice has been given of any default that has not been cured (and, if so, specifying the same), and (4) any other matters reasonably requested.

13. **Miscellaneous Provisions.**

13.1 **Entire Agreement/Integration, Amendments.** This Easement Agreement and the Development Agreement contain the entire understanding and agreement of the Parties with respect to the subject matter hereof. No prior or other understanding shall be of any force or effect with respect to those matters covered herein. This Easement Agreement may be altered, amended or modified only by an instrument in writing, executed by the City and Owner, and recorded in the Official Records of San Mateo County. The Parties acknowledge that this Agreement has been executed pursuant to the terms of the Development Agreement and that Sections 2.4.3 and 2.5.2 of the Development Agreement are incorporated herein by this reference to the extent they pertain to the Bridge.

13.2 **Recordation; No Waiver.** This Agreement shall be recorded in the Official Records of San Mateo County. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

13.3 **Notice.** Any notices required or permitted hereunder shall be in writing and shall be served on the Parties at the addresses set forth below. Each such notice shall be either sent by: (a) overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered upon receipt or refusal of delivery; (b) by sending the same to such Party by registered or

certified mail, return receipt requested, with postage prepaid, in which case notice shall be deemed delivered upon receipt or refuse of delivery; or (c) personal delivery, in which case notice shall be deemed delivered upon receipt or refusal of delivery. A Party's address may be changed by written notice to the other Parties. Notice given by counsel shall be deemed given by the Party represented by such counsel.

Owner's Address:

With a copy to:

City's Address: City of San Carlos
600 Elm Street
San Carlos, CA 94070
Attn: City Manager

With copies to: City of San Carlos
600 Elm Street
San Carlos, CA 94070
Attn: CDD Director

and

City of San Carlos
600 Elm Street
San Carlos, CA 94070
Attn: City Attorney

13.4 Counterparts. This Easement Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

13.5 Recitals. The Recitals above are incorporated herein by reference.

13.6 Binding on Successors and Assigns. The Bridge Easement Area is to be burdened by, and City is to be benefited by, the provisions of this Easement Agreement pertaining to the grant of Easement, and such Bridge Easement Area shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the foregoing easements, limitations, restrictions, obligations and conditions. All provisions of this Easement Agreement shall run with the land and be binding upon all parties having or acquiring any right, title, or interest in the Bridge Easement Area, and shall be binding upon and inure to the benefit of the City and its and their successors and assigns.

13.7 Partial Invalidity. If any term or provision of this Easement Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Easement Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Easement Agreement shall be valid and shall be enforced to the extent permitted by law.

13.8 Not a Public Dedication. Except as expressly provided herein, nothing herein contained shall be deemed to be a gift or dedication of the Bridge Easement Area or any other portion of Owner's Property to the general public or for any public purpose whatsoever, it being the intention of the parties that this Easement Agreement shall be limited to and for the purposes herein expressed. Owner shall reserve the right to record and/or post notices pursuant to Civil Code Sections 813 and/or 1008 with regard to the Bridge Easement Area.

13.9 No Partnership, Co-venture, or Principal-Agent Relationship. Nothing in this Agreement is intended to or does establish the Parties hereto as partners, coventurers, or principal and agent with one another.

13.10 No Third-Party Beneficiaries. Nothing in this Agreement shall provide any benefit to any third party (including but not limited to members of the public) or entitle any third party to any claim, cause of action, remedy or right of any kind.

13.11 Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of California, without regard to conflict of law principles.

13.12 Force Majeure. The time within which Owner shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes; lock-outs; Acts of God; severe and unsafe weather; unavailability of materials or labor by reason of regulations or order of any governmental or regulatory body; unavailability of labor for any other reason beyond the reasonable control of the Party seeking the delay; changes in local, state or federal laws or regulations, any development moratorium, or any action of other public agencies that regulate land use, development or the provision of services when any of the foregoing prevents, prohibits or delays construction of the Project; enemy action; riots; insurrections; civil disturbances; wars; terrorist acts; fire; unavoidable casualties; natural disasters; emergency declarations; epidemics; pandemics; government mandated shutdowns; litigation involving this Agreement or the Project Approvals (as defined in the Development Agreement); any other cause beyond the reasonable control of Owner that substantially interferes with carrying out the development of the Project; or the occurrence of any of the following events: (a) the governmental offices where any action required under this Agreement (collectively, "**Government Offices**") are not open for business and any Government Offices' systems are not operational such that such action cannot occur; (b) any other third party is not open for business such that its services required as necessary for a Party to perform obligations under this Agreement cannot be performed; (c) overnight couriers are not operating such that any documents cannot be delivered to the extent such documents are required to be originals; or (d) financial institutions or wire transfer systems are not operating, such that, as part of consummation of financial transactions contemplated hereby cannot occur) (each of the events described in (a) through (d), a "**Government Closure**" (collectively, "**Force Majeure Events**"). Such extension(s) of time shall not constitute a default under this Agreement and shall occur at the request of any Party. For the avoidance of doubt, none of the foregoing is Force Majeure Event: (1) a decline in market conditions; (2) economic recessions; (3) inability to obtain credit or financing; or (4) the appointment of a receiver to take possession of the assets of Owner, an assignment by Owner, for the benefit of creditors, or any other action taken or suffered by Owner under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute.

13.13 Exhibits; Attachments. The following attachments are attached to this Easement Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Depiction of Property

Exhibit B Depiction of Bridge

Exhibit C Depiction and Legal Description of Bridge Easement Area

13.14 Attorneys' Fees. Should any legal action be brought by any party with respect to this Easement Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorney's fees and such other costs as may be found by the court.

13.15 Joint and Several Liability. If more than one person or entity is included in the definition of Owner, the liability of all such persons hereunder shall be joint and several.

IN WITNESS WHEREOF, the City and Owner have executed this Easement Agreement as of the Easement Agreement Effective Date.

CITY

CITY OF SAN CARLOS, a municipal corporation

By: _____

[Signature must be notarized]

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____

OWNER

_____,

a _____

By: _____

Name: _____

Its: _____

[Signature must be notarized]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (seal)

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signature: _____ (seal)

LENDER SUBORDINATION AND CONSENT

_____, with an office at _____, and its successors and assigns (“**Beneficiary**”), is the beneficiary under that certain [*Insert name and recording info of recorded loan document, such as: Deed of Trust, Security Agreement and Fixture Filing (with Assignment of Rents and Leases)*] executed by _____, as Trustor, dated as of _____ and recorded on _____ in the Official Records of San Mateo County, California (the “**Official Records**”) as Document No. _____ (the “**Deed of Trust**”).

The Deed of Trust encumbers the real property described as the “**Property**” in the Bridge Easement and Maintenance Agreement (the “**Agreement**”) to which this Subordination and Consent of Lender is attached and made a part. As the beneficiary under the said Deed of Trust, Beneficiary hereby consents to the execution and recordation of the Agreement and agrees that upon recordation of the Agreement in the Official Records, Beneficiary’s interests in the Property and rights under the Deed of Trust shall be subject and subordinate to the Agreement.

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

[illegible]

On _____, 2025, before me _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

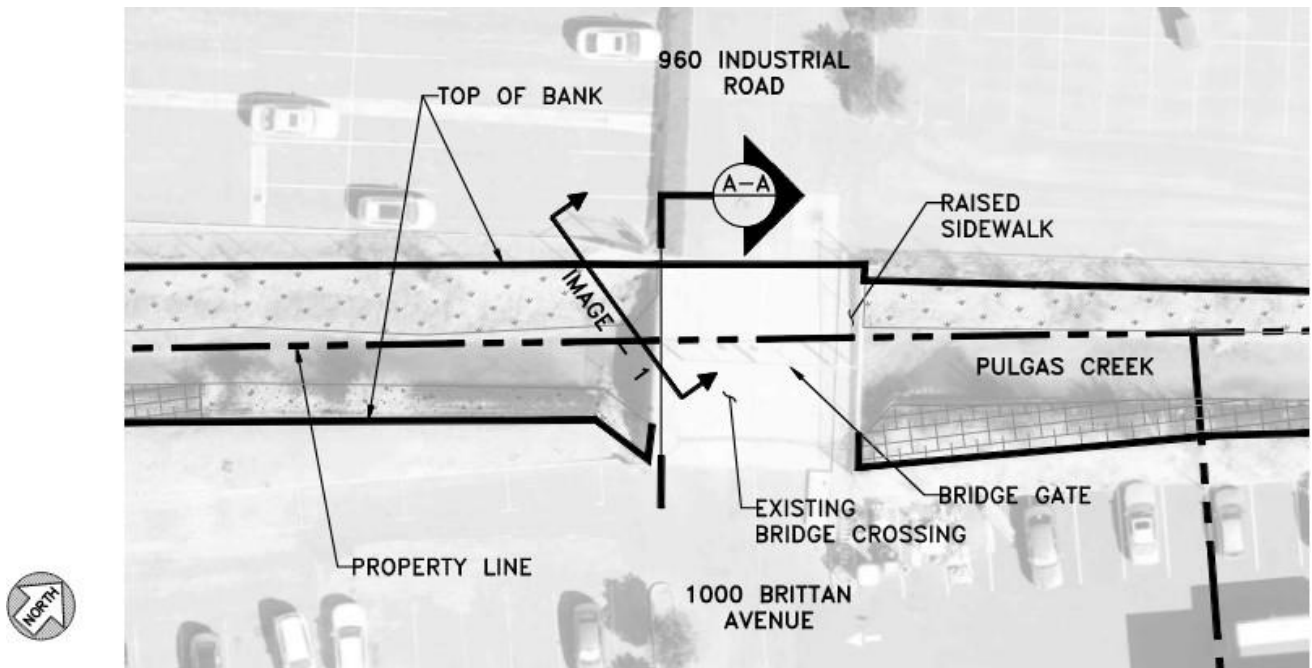
Signature _____

Exhibit A

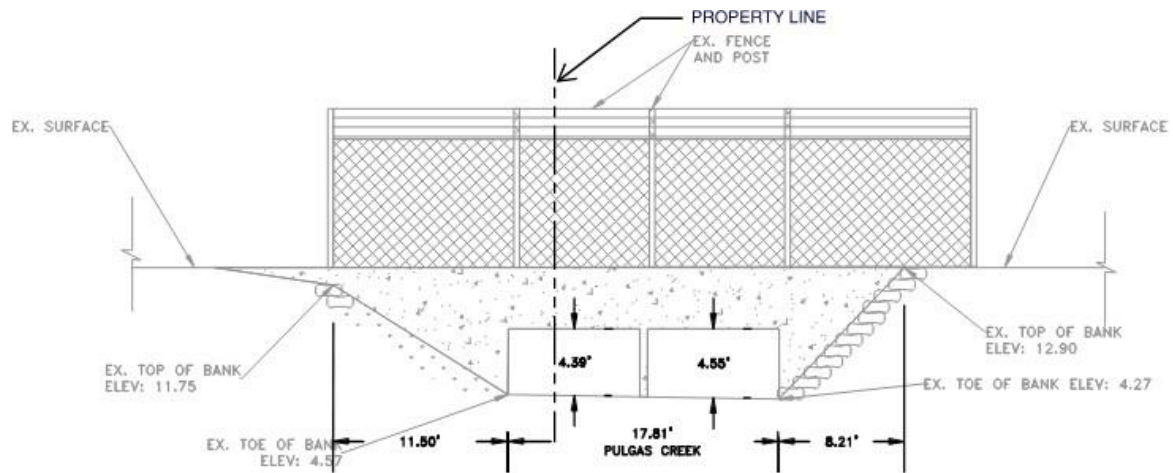
DEPICTION OF THE PROPERTY

Exhibit B

DEPICTION OF BRIDGE



① BRIDGE CROSSING – PLAN VIEW



A-A BRIDGE CROSSING – SECTION A-A

Exhibit C

DEPICTION AND LEGAL DESCRIPTION OF THE BRIDGE EASEMENT AREA

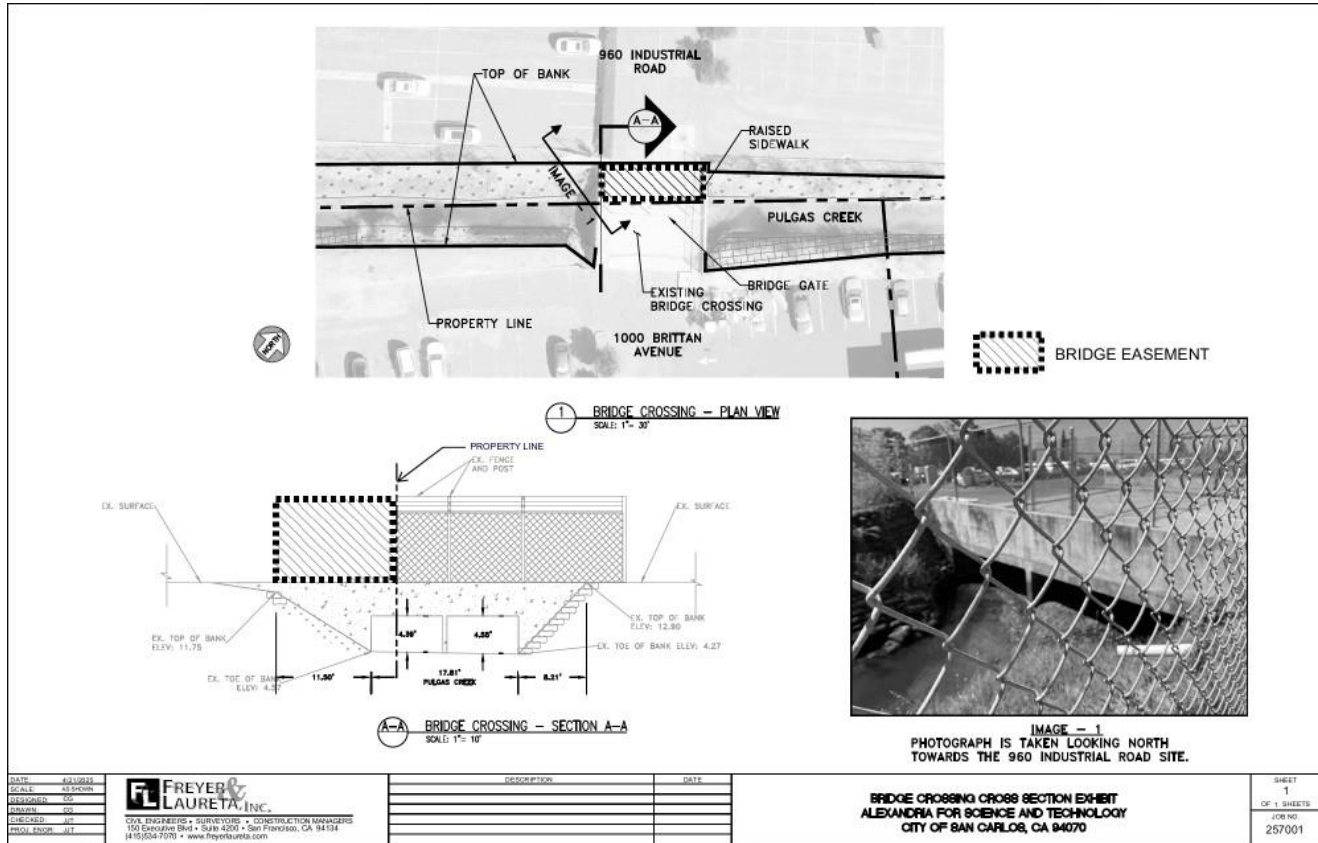


EXHIBIT K

**FORM OF COVENANTS, AGREEMENTS, AND DEED RESTRICTIONS FOR
PRIVATELY OWNED PUBLICLY ACCESSIBLE (POPA) CAMPUS AREAS**

[ATTACHED]

OFFICIAL BUSINESS

Document entitled to free recording
Government Code Section 6103

RECORDING REQUESTED BY AND
PLEASE RETURN TO:

City of San Carlos
Attn: City Clerk
600 Elm Street
San Carlos, CA 94070

SPACE ABOVE THIS LINE FOR
RECORDER'S USE

APN:
Address:

**COVENANTS, AGREEMENTS, AND DEED RESTRICTIONS FOR PRIVATELY
OWNED PUBLICLY ACCESSIBLE (POPA) CAMPUS AREAS**

This Covenants, Agreements, and Deed Restrictions for Privately Owned Publicly Accessible (POPA) Campus Areas (this "**Agreement**"), is made and entered into as of _____, 202_ ("**Effective Date**") by and between the CITY OF SAN CARLOS, a California municipal corporation ("**City**"), and ____ ("**Owner**"). City and Owner are referred to individually as "**Party**," and collectively as the "**Parties**."

RECITALS

A. Owner owns that certain real property located in the City of San Carlos, State of California, as depicted in **Exhibit A** (the "**Property**" or "**Owner's Property**"), attached hereto and incorporated herein.

B. Owner intends to develop the Property with approximately 1,630,000 square feet of gross floor area of Class A office/research and development buildings, which may include a café and/or tenant amenities (possibly including a childcare center); surface parking lots and parking garages; and associated improvements ("**Project**"). Owner anticipates that the Project will be constructed in three phases, as follows: the first phase is anticipated to consist of two office/research and development buildings totaling approximately 537,000 square feet of gross floor area and surface parking lots, ("**Phase I**"); the second phase is anticipated to consist of two office/research and development buildings and the amenity building totaling approximately 514,382 square feet of gross floor area and a parking garage ("**Phase II**"); and the third phase is anticipated to consist of two office/research and development buildings totaling approximately 683,150 square feet of gross floor area and a parking garage ("**Phase III**"). The Parties acknowledge that the number, location, and sequencing of Project phases is subject to change at the election of Owner.

C. Owner and City are parties to that certain Development Agreement dated ____, 2025, and recorded in the Official Records of San Mateo County at _____, (“**Development Agreement**”). In connection with the Project, City has issued certain Project Approvals, as defined in the Development Agreement:

D. The Project includes privately owned publicly accessible campus areas as more particularly described in **Exhibit B** (the “**POPA Areas**”), attached hereto and incorporated herein. The portion of the Property that is subject to and bound by this Agreement is described in **Exhibit B**.

E. This Agreement shall satisfy Condition No. 75 of the Code Compliance Certificate- Design Review, Tentative Parcel Map, Grading and Dirt Hall Certificate, Protected Tree Removal and Transportation Demand Management Plan, as well as Section 2.9.4 of the Development Agreement.

F. The Parties now desire to set forth their respective rights and obligations with respect to the operation, use and maintenance of the POPA Areas.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto hereby covenant, represent, and agree as follows:

1. Definitions. The following defined terms shall apply to this Agreement.
 - a. “**Action Plan**” is defined in Section 8.
 - b. “**Building**” or “**Buildings**” means the building structures constructed on the Property as part of the Project.
 - c. “**Casualty**” is defined in Section 4.
 - d. “**Effective Date**” is defined in Section 3.
 - e. “**Laws**” is defined in Section 6.
 - f. “**POPA Improvements**” is defined in Section 7.
 - g. “**Publicly Accessible Plaza Purposes**” is defined in Section 2.
2. Concurrent Uses. Each Party agrees and acknowledges that the POPA Areas will be used concurrently by the public for Publicly Accessible Plaza Purposes and by Owner, Owner’s tenants, and the guests, licensees, employees, agents, servants and representatives of Owner and Owner’s tenants. Owner shall not obstruct, use or permit the use of the POPA Areas in any manner that will unreasonably interfere with regular ingress to, egress from, or public use and enjoyment of the POPA Areas Publicly Accessible Plaza Purposes. Notwithstanding the foregoing, from time to time, Owner shall have the right to close public access to some or all of the POPA Areas temporarily for specific campus/tenant events no more than once per month. “**Publicly Accessible Plaza Purposes**” means use of the POPA Areas as a privately owned and

maintained plaza held open to the public for public access and open space purposes, including, but not limited to, walking, sitting, picnicking, dining, active and passive recreational uses, and travel by non-automotive means, every day between and during the hours set forth in Section 5 (Operating Hours) of this Agreement.

3. Term; Termination. Owner's obligation to make the POPA Areas available to the public under this Agreement shall commence upon City's issuance of a certificate of occupancy for the first Building other than a parking garage for the Phase of the Project in which the POPA Areas subject to this Agreement are located ("**Effective Date**"). Notwithstanding the foregoing, upon forty-eight (48) hours' prior written notice to City, Owner may temporarily limit or close the POPA Areas to perform construction activities on the POPA Areas, the POPA Improvements, or adjacent buildings and Project improvements. The term of this Agreement shall commence on the Effective Date and shall terminate at such time as City elects to terminate the Agreement in its sole and absolute discretion, or upon the occurrence of one of the events described in Section 3(a), 3(b), or 3(c), except as provided in 3(c):

a. The Project is completely demolished and not reconstructed for reasons other than those set forth in Section 3(b);

b. The Project is damaged or destroyed by a fire, earthquake, explosion, tornado, flood, or hurricane or other casualty (each, a "**Casualty**"), the Project is completely demolished following the Casualty, and the Project is not reconstructed; or

c. The Project undergoes a substantial change that is not already permitted under the Project Approvals, and public access cannot be maintained by modifying the boundaries of or relocating any POPA Open Space. Upon Owner's decision to propose such a substantial change to the Project, Owner shall request City's prior written consent to modify the boundaries of or relocate any POPA Open Space, which shall not be unreasonably withheld, conditioned or delayed. Owner's request shall include a proposed new location of such POPA Open Space or proposed modified boundaries of such POPA Open Space. City shall respond within fifteen (15) business days. If the City responds that the proposed location or new boundaries of such POPA Open Space are unacceptable, City and Owner shall meet and confer for at least thirty (30) days to identify a new location for or new boundaries of such POPA Open Space mutually agreeable to the Parties. If the City Community Development Director provides consent and the Planning Commission and/or City Council thereafter approve any necessary land use approvals for the relocation or modification of the POPA Open Space as described herein, Owner and City shall record a memorandum of modification to this Agreement or an amended and restated Agreement confirming the location, width, and dimensions for such POPA Open Space, in which case this Agreement shall not terminate (unless otherwise stated in the amended and restated Agreement).

The City Community Development Director is authorized to provide consent on behalf of the City, but such consent shall be subject to the Planning Commission and/or City Council's approval of any land use approvals necessary for the modification or relocation.

4. Signage. The following signage shall be clearly and visibly posted within the POPA Open Space by Owner and maintained in good condition. Signs must comply with all

Laws (defined below) and Owner must obtain all required permits for the signage pursuant to Section 6 herein prior to installation.

a. A primary monument sign with the name of each POPA Open Space must be prominently located at the main entrance; additional monument signs located at secondary entrances may be considered.

b. At each entrance(s) to the POPA Open Space, a sign shall be posted with the following rules, regulations, and information for visitors:

1. announce the area as a privately owned publicly accessible open space for public recreation and use;

2. hours of use;

3. the phone number of the Owner's representative for visitors to contact for maintenance and safety concerns; and

4. state "in case of emergencies, please call 9-1-1."

c. Fire lane signage must be posted in accordance with Fire Code requirements.

5. Operating Hours. The POPA Areas shall be publicly accessible seven days a week from thirty (30) minutes prior to sunrise to thirty (30) minutes after sunset.

6. Compliance with Law. Owner shall comply with all applicable legal requirements including all federal, state and local laws and regulations (including City ordinances, resolutions and policies, and requirements of other agencies with authority), whether or not said laws or regulations are expressly stated in this Agreement (collectively, "**Laws**") applicable to the POPA Areas, and Owner shall, at its sole cost and expense, obtain and maintain all permits and licenses, if any, as required by the Laws applicable to the POPA Areas. The "**Laws**" applicable to the POPA Areas during the Term of the Development Agreement are defined in the Development Agreement.

7. Maintenance. During the term of this Agreement, Owner shall maintain the POPA Areas and the improvements to be constructed within the POPA Areas in accordance with the Development Agreement and the Project Approvals (collectively, the "**POPA Improvements**") in good condition. All POPA Improvements shall be repaired or replaced with materials, apparatus and facilities of at least equal quality of the materials, apparatus and facilities at initial construction of the POPA Improvements. Landscaping shall be maintained as necessary to prevent death and overgrowth of landscaping, including watering/irrigation; fertilization; removing weeds; mowing; edging; trimming of grass; tree and shrub pruning; and trimming and shaping of trees and shrubs. Owner may temporarily limit or close the POPA Areas to perform maintenance, repair and replacement activities on the POPA Areas, the POPA Improvements, or adjacent Buildings and Project improvements. Without limiting the foregoing, Owner agrees to utilize diligent good faith efforts to ensure that any maintenance, repair or other work is undertaken expeditiously and in a manner that minimizes any adverse impacts on any of

the rights under this Agreement. Owner shall erect appropriate signage and safety barriers to notify the public of any restriction on public use of the POPA Areas and/or POPA Improvements during repairs, replacements, upgrades, and modifications of the POPA Improvements or any adjacent Buildings and/or Project improvements. Owner shall provide City written notice of any complete closure of any POPA Open Space or portion thereof anticipated to last five (5) days or more.

8. Urgent Health or Safety Deficiencies.

a. City shall notify Owner in writing if the condition of the POPA Areas and/or the POPA Improvements creates an urgent deficiency related to public health and safety and specify in detail the deficiencies and the actions to be taken by Owner to cure the deficiencies. Upon notification of any maintenance deficiency pursuant to this Section 8.a, Owner shall have a reasonable time not to exceed three (3) business days present to City a plan of action with a clear schedule that will rectify the deficiency (“**Action Plan**”). The Action Plan shall be subject to City’s approval, with such approval not to be unreasonably withheld, conditioned, or delayed.

b. If, following notice as provided above, Owner fails to timely submit an Action Plan or, after City’s approval of the Action Plan, fails commence and diligently pursue action to cure in accordance with the approved Action Plan, or should a public health and safety emergency require immediate action, City, at its option, shall have the right (i) to seek immediate judicial relief to compel Owner submit an Action Plan, implement the approved Action Plan, or otherwise address any public health and safety emergency requiring immediate action, and/or (ii) impose penalties applicable to violations of the City’s Zoning Code pursuant to Section 18.39.050 of the San Carlos Municipal Code. In addition to the foregoing remedy, City may also pursue any and all other remedies available in law or equity in the event of Owner’s breach of the maintenance obligations set forth herein following written notice and an opportunity to cure as provided for above.

9. Rules and Regulations. Owner shall have the right to adopt, amend from time to time, and enforce reasonable rules and regulations for use of the POPA Open Space consistent with this Agreement, including for purposes of public health, safety and security, to avoid interference with commercial operations at the Project, and to ensure that the POPA Areas are available and used for Publicly Accessible Plaza Purposes. Owner shall provide City notice of such rules and post signs with the rules and regulations online and in a conspicuous location in, on, or immediately adjacent to the POPA Areas. Without limiting the generality of the foregoing, Owner shall have the right to place reasonable restrictions on the time, place, and manner of any organized gatherings in the POPA Areas and the right to reasonably restrict the use of motorized means of transportation within the POPA Areas.

10. Future Modifications. Should Owner desire to modify the POPA Area and/or POPA Improvement design, location, and/or configuration, Owner shall submit applications to City for all necessary permits pursuant to Section 6 and shall make good faith efforts to ensure that any proposed modifications provide substantially the same square footage as the POPA Areas.

11. No Liability of City. City shall not be responsible for any of the costs of maintaining, repairing, replacing or modifying the POPA Areas or POPA Improvements. In addition, neither City nor any of its officers, agents, volunteers or employees shall be liable to Owner, or its contractors, subcontractors, officers, agents or employees, for any act or omission, injury or damage that may result to any person or property, or any obligation whatsoever, arising out of or in connection with any work to be performed by Owner hereunder or by failure to perform under this Agreement, except to the extent due to the active negligence or willful misconduct of City, its officers, agents, volunteers or employees.

12. Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon Owner and its successors and assigns, and all other persons acquiring all or a portion of the POPA Areas, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law. The provisions of this Agreement shall not be construed as personal obligations of Owner or as an easement. The Parties acknowledge and agree that this Agreement is to implement Section 2.9.4 of the Development Agreement, the terms of which constitute covenants running with the land pursuant to California Government Code Section 65868.5. Each covenant herein to act or refrain from acting is intended to burden the POPA Areas, run with the POPA Areas, and is binding on Owner and its heirs, successors and assigns. Each and every contract, deed or other instrument covering, conveying or otherwise transferring the POPA Areas or any portion thereof or interest therein shall conclusively be held to have been executed, delivered and accepted subject to this Agreement. Upon conveyance of fee title to Owner's the POPA Areas by Owner or its successor owner, as applicable, the conveying Party shall be released from all obligations under this Agreement accruing after the effective date of such conveyance.

13. Recordation; Amendment; No Waiver. This Agreement shall be recorded in the Official Records of San Mateo County. The Parties hereto declare and agree that each of the rights granted hereunder are a burden on the POPA Areas, and shall inure to the benefit of City, its successors and assigns, and all those taking by, under or through City. This Agreement may be modified only by the written consent of the Parties, evidenced by a document that has been fully executed, acknowledged and recorded in the Official Records of San Mateo County, California. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions and conditions hereof.

14. Legal and Equitable Relief. Each Party shall have the right to prosecute any proceedings at law or in equity against any other Party, or any other person or entity, violating or attempting to violate or defaulting in the performance of any of the provisions contained in this Agreement in order to prevent such party, person or entity from violating or attempting to violate or defaulting in the performance of any of the provisions of this Agreement or to recover damages for any such violation or default. It is agreed that damages would be an inadequate remedy for violation of this Agreement by any party and, therefore, injunctive or other appropriate equitable relief shall be available to the other Party. The remedies available under this Section 15 shall include, by way of illustration but not limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or default, and actions for specific performance of this Agreement. The result of

every action or omission whereby any covenant, condition or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against any Party, either public or private, shall be applicable against every such result and may be exercised by any Party.

15. Attorneys' Fees. In the event that any action is brought by either Party hereto as against the other Party for the enforcement or declaration of any right or remedy in or under this Agreement or for the breach of any covenant or condition of this Agreement, the prevailing party shall be entitled to recover, and the other Party agrees to pay (in addition to any other relief that may be granted) all reasonable fees and costs to be fixed by the court therein including, but not limited to, reasonable attorneys' fees.

16. Indemnification. Owner to the fullest extent permitted by law, shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless the City, its officers, elected and appointed officials, agents, contractors, representatives and employees (individually, a "**City Party**" and, collectively, "**City Parties**") from and against any and all third party suits or actions at law or in equity, liabilities, claims, obligations, losses, demands, penalties, fines, liens, judgments, damages, costs and expenses (including reasonable attorneys' fees) (collectively "**Claims**"), including, but not limited to, Claims for bodily injury, sickness, disease or death of any person or damage to real or personal property, tangible or intangible arising directly or indirectly from the acts, omissions, negligence or willful misconduct of Owner or its contractors, subcontractors, agents or employees (each, a "**Owner Party**" and collectively "**Owner Parties**") in connection with the design, operation, or maintenance of the POPA Open Space or performance or failure to perform Owner's obligations under this Agreement. Owner's indemnity obligations under this Section 19 shall not extend to Claims to the extent that any such Claims are the result of the gross negligence or willful misconduct of a City Party. Owner's duty to indemnify and hold harmless City includes the duty to defend as set forth in Civil Code section 2778. Owner's indemnification obligations under this Section shall survive termination of this Agreement until such time as the statute of limitations periods for Claims that arose prior to termination expiration or termination has run.

17. Insurance.

a. Owner shall obtain and maintain at all times during the Term insurance against claims for injuries to persons or damage to property that may arise out of any manner including (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the POPA Areas, or any part thereof, whether such injury, death, damage or destruction is caused by the person or property of the Owner, representatives, employees or subcontractors. The insurance carrier is required to maintain an A.M. Best rating of not less than "A-:VII".

b. Coverages and Limits. Owner, at its sole expense, shall continuously maintain the types of coverages and minimum limits indicated below, unless otherwise approved by City in writing. These minimum amounts of coverage will not constitute any limitations or cap on Owner's indemnification obligations under this Agreement.

1. Commercial General Liability Insurance. Owner shall maintain occurrence based coverage with limits not less than \$2,000,000 per occurrence. If the submitted policies contain aggregate limits, such limits will apply separately to the services, project, or location that is the subject of this Agreement or the aggregate will be twice the required per occurrence limit. The Commercial General Liability insurance policy shall be endorsed to name the City, its officers, agents, employees and volunteers as additional insureds, and to state that the insurance will be primary and not contribute with any insurance or self-insurance maintained by the City.

2. Business Automobile Liability Insurance. Owner shall maintain coverage with limits not less than \$1,000,000 per each accident for owned, hired and non-owned automobiles.

3. Workers' Compensation and Employer's Liability Insurance. Owner shall maintain coverage as required by the California Labor Code and Employer's Liability limits with limits not less than \$1,000,000 per each accident for bodily injury or disease. The Worker's Compensation policy shall contain an endorsement stating that the insurer waives any right to subrogation against the City, its officers, agents, employees, and volunteers.

c. Providing Certificates of Insurance and Endorsements. Prior to City's execution of this Agreement, Owner shall provide to City certificates of insurance and above-referenced endorsements sufficient to satisfaction of City's Risk Manager. In no event shall Owner commence any work under this Agreement until certificates of insurance and endorsements have been accepted by City's Risk Manager.

d. Failure to Maintain Coverage. If Owner fails to comply with these insurance requirements, then City will have the option to declare Owner in default.

e. Submission of Insurance Policies. City reserves the right to require, at any time, complete copies of any or all required insurance policies and endorsements.

18. Notices. Any notices required or permitted hereunder shall be in writing and shall be served on the Parties at the addresses set forth below. Each such notice shall be either sent by: (a) overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered upon receipt or refusal of delivery; (b) by sending the same to such Party by registered or certified mail, return receipt requested, with postage prepaid, in which case notice shall be deemed delivered upon receipt or refusal of delivery; or (c) personal delivery, in which case notice shall be deemed delivered upon receipt or refusal of delivery. A Party's address may be changed by written notice to the other Parties. Notice given by counsel shall be deemed given by the Party represented by such counsel.

To City: City of San Carlos
 600 Elm Street
 San Carlos, CA 94070
 Attn: City Manager

With copies to: City of San Carlos
600 Elm Street
San Carlos, CA 94070
Attn: City Attorney

and
City of San Carlos
600 Elm Street
San Carlos, CA 94070
Attn: CDD Director

To Owner:

With a copy to:

19. Mortgagee Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument (“**Mortgage**”); provided, however, that any successor of Owner to the Property shall be bound by this Agreement whether such successor’s title was acquired by foreclosure, deed in lieu of foreclosure, trustee’s sale or otherwise. Neither City nor Owner shall be permitted to cancel, surrender or materially modify the terms of this Easement Agreement without the consent of any mortgagee of record. Any mortgagee of record shall have the right (but not the obligation) to perform Owner’s obligations hereunder. Without limiting the foregoing, in the event of a default on the part of Owner hereunder, each mortgagee that has given notice of its Mortgage to City (each a “**Mortgage**”) shall have the right (but not the obligation) during the same period available to Owner to cure or remedy, or to commence to cure or remedy, the default claimed or the areas of noncompliance set forth in City’s notice, provided that Mortgagee shall have an additional fifteen (15) days (with respect to monetary defaults only) or an additional thirty (30) days (with respect to non monetary defaults), or such reasonable period of time beyond thirty (30) days, if such non-monetary default is not susceptible to being cured within such thirty (30) days, beyond the applicable cure period set forth in this Agreement within which to cure or to commence the curing of such default as therein provided during which additional period this Agreement shall remain in full force and effect (nothing contained herein shall obligate a Mortgagee to cure a default, it being understood that any election to cure a default shall be at the Mortgagee’s sole option). In case of a default that is not susceptible of being cured by the Mortgagee, this Agreement will remain in full force and effect if Mortgagee institutes proceedings to acquire title to the Property by foreclosure or otherwise, and diligently prosecutes the same to completion. If the Mortgagee, or its nominee, or a purchaser at a foreclosure sale, or by deed in lieu of foreclosure, shall cure all defaults that are susceptible of

being cured by such Mortgagee, or by such purchaser, as the case may be, then the defaults of any prior holder of the defaulting Owner's interest hereunder that are not susceptible of being cured by such Mortgagee or by such purchaser shall no longer be deemed to be defaults hereunder. In the event any Mortgage encumbering the Property shall be foreclosed, the Owner shall remain liable for any defaults under this Agreement existing at the time of any foreclosure, and the successor in title of Owner to the Property shall be responsible only to the extent necessary to bring the Property into current compliance with Owner's obligations under this Agreement, and not for any past uncured defaults. Upon request of any such mortgagee, the City will confirm the provisions hereof in a separate writing in favor of any Mortgagee, along with such changes reasonably requested by such Mortgagee and consented to by the City (not to be unreasonably withheld, conditioned or delayed).

20. Subordination. Owner shall cause the Mortgage of any Mortgage recorded against the POPA Areas as of the recordation date hereof to subordinate the lien of its Mortgage to this Agreement within sixty (60) days following the effective date of this Agreement with the form of subordination agreement substantially as set forth on the Lender Consent and Subordination page immediately following the signature page hereof, or such other form as is reasonably approved by the City Attorney.

21. Estoppel Certificates. Any Party to this Agreement shall, promptly upon the request of any other Party or any Mortgagee, execute, acknowledge and deliver to or for the benefit of the requesting Party (or Mortgagee, if applicable), at any time, from time to time, and at the expense of the Party (or, if requested by any Mortgagee, Owner) requesting a certificate as herein below described, its certificate certifying (1) that this Easement Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Easement Agreement is in full force and effect, as modified, and stating the modifications), (2) whether there are then existing any charges, offsets or defenses against the enforcement of any agreement, covenant or condition hereof on the part of the Party requesting (or, if requested by a Mortgagee, Owner) the certificate to be performed or observed (and, if so, specifying the same), (3) whether there are then existing any defaults on the part of the Party requesting the certificate (or, if requested by a Mortgagee, Owner) known to the Party delivering the certificate in the performance or observance of any agreement, covenant or condition hereof to be performed or observed and whether any notice has been given of any default that has not been cured (and, if so, specifying the same), and (4) any other matters reasonably requested.

22. Miscellaneous.

a. Captions. The captions of this Agreement are inserted only as a matter of convenience and for reference. They do not define, limit, or describe the scope or intent of this Agreement and they shall not affect the interpretation hereof.

b. Exhibits and Recitals. The Recitals above and each of the exhibits attached hereto are incorporated herein by reference.

c. Entire Agreement. This Agreement, together with the Development Agreement and the Project Approvals represent the entire understanding of the Parties as to those matters contained herein. No prior or other understanding shall be of any force or effect with

respect to those matters covered herein. The Parties acknowledge that this Agreement has been executed pursuant to the terms of the Development Agreement and that Sections 2.9.4 and 2.9.5 of the Development Agreement are incorporated herein by this reference.

d. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of California, without regard to conflict of law principles.

e. No Partnership, Co-venture, or Principal-Agent Relationship. Nothing in this Agreement is intended to or does establish the Parties hereto as partners, coventurers, or principal and agent with one another.

f. No Third-Party Beneficiaries. Nothing in this Agreement shall provide any benefit to any third party (including but not limited to members of the public) or entitle any third party to any claim, cause of action, remedy or right of any kind.

g. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of the POPA Areas, the POPA Improvements, or any other portion of the Property to the general public or for any public purpose whatsoever, it being the intention of the Parties that this Agreement shall be limited to and for the purposes herein expressed. Owner shall reserve the right to record and/or post notices pursuant to Civil Code Sections 813 and/or 1008 with regard to the POPA Areas.

h. Force Majeure. The time within which Owner shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes; lock-outs; Acts of God; severe and unsafe weather; unavailability of materials or labor by reason of regulations or order of any governmental or regulatory body; unavailability of labor for any other reason beyond the reasonable control of the Party seeking the delay; changes in local, state or federal laws or regulations, any development moratorium, or any action of other public agencies that regulate land use, development or the provision of services when any of the foregoing prevents, prohibits or delays construction of the Project; enemy action; riots; insurrections; civil disturbances; wars; terrorist acts; fire; unavoidable casualties; natural disasters; emergency declarations; epidemics; pandemics; government mandated shutdowns; litigation involving this Agreement or the Project Approvals (as defined in the Development Agreement); any other cause beyond the reasonable control of Owner that substantially interferes with carrying out the development of the Project; or the occurrence of any of the following events: (a) the governmental offices where any action required under this Agreement (collectively, “**Government Offices**”) are not open for business and any Government Offices’ systems are not operational such that such action cannot occur; (b) any other third party is not open for business such that its services required as necessary for a Party to perform obligations under this Agreement cannot be performed; (c) overnight couriers are not operating such that any documents cannot be delivered to the extent such documents are required to be originals; or (d) financial institutions or wire transfer systems are not operating, such that, as part of consummation of financial transactions contemplated hereby cannot occur) (each of the events described in (a) through (d), a “**Government Closure**” (collectively, “**Force Majeure Events**”). Such extension(s) of time shall not constitute a default under this Agreement and shall occur at the request of any Party. For the avoidance of doubt, none of the foregoing is

Force Majeure Event: (1) a decline in market conditions; (2) economic recessions; (3) inability to obtain credit or financing; or (4) the appointment of a receiver to take possession of the assets of Owner, an assignment by Owner, for the benefit of creditors, or any other action taken or suffered by Owner under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute.

i. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent by law.

j. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument as of the day and year first above written.

“CITY”:

CITY OF SAN CARLOS,
a California municipal corporation

By: _____
City Manager

Printed Name

“OWNER”:

_____,
a _____ company

By: _____

Printed Name

Title: _____

APPROVED AS TO CONTENT:

By: _____
Print Name: _____
Its: Community Development Director

APPROVED AS TO FORM:

By: _____
Print Name: _____
Its: City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signature: _____ (seal)

STATE OF CALIFORNIA)
COUNTY OF SAN MATEO)

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Signature: _____ (seal)

Recording Requested by and
When Recorded Return to:

Exempt from Recording Fees per Govt. Code §§ 6103 and 27383
This Line for Recorder's Use Only

Space above

SUBORDINATION AND CONSENT OF LENDER

_____[Lender]_____, a _____, with an office at _____,
_____, _____, Attention: _____, and its successors and
assigns ("**Beneficiary**"), is the beneficiary under that certain _____[Deed of Trust]_____,
executed by _____[Trustor]_____, a _____, as Trustor, dated as of
_____, 20__ and recorded on _____, 20__ in the Official
Records of Santa Clara County, California (the "**Official Records**") as Document No.
_____ (the "**Deed of Trust**").

The Deed of Trust encumbers the real property described as the "**Property**" in the Covenants, Agreements and Deed Restrictions for Privately Owned, Publicly Accessible (POPA) Campus Areas (the "**Agreement**") between the City of San Carlos and Trustor dated _____, 20__ and recorded in the Official Records of San Mateo County on _____, 20__ as Instrument No. _____. As the beneficiary under said Deed of Trust, Beneficiary hereby consents to execution and recordation of the Agreement and agrees that Beneficiary's interests in Owner's Property and rights under the Deed of Trust shall be subject and subordinate to the Agreement.

Dated _____, 20__

[Lender],
a _____

By: _____
Name: _____
Title: _____

[Signature must be notarized.]

EXHIBIT A

DEPICTION OF THE PROPERTY

Exhibit A

EXHIBIT B
LEGAL DESCRIPTION AND PLAT OF POPA AREAS

Exhibit B

APPENDIX I **DEFINITIONS**

AB 1600 — Section 3.6.3.b

Administrative Amendment — Section 6.4.2

Agreement Date — Preamble

Agency/Agencies— Section 2.9.2.b

Alternative Creek Trail — Section 2.4.4.b

Alternative Event Space — Section 2.9.2.b

Amenity Uses — Section 2.9.2.a

Applicable General Plan — Section 3.2.a

Applicable Law – Section 11.6

Applicable Local Building Code Modifications — Section 3.2.c

Applicable Rules — Section 3.2.d

Applicable Zoning Ordinance — Section 3.2.b

ARE — Preamble

Arts Master Plan — Section 2.3

Beneficial Project Features — Section 2.9

Bridge — Section 2.4.3

Brittan Owner — Section 2.5.2

Casualty — Section 2.5.1

CEQA — Recital I

City — Preamble, Section 1.1.1

City Council — Recital L

City Development Agreement Regulations — Recital C

Claims — Section 11.7

Community Benefit Payments — Section 2.2.1

Community Benefits — Section 2.1

Community Group(s) — Section 2.9.2.b

Conflict — Section 3.4.2.a

Creek Improvements — Section 2.4.2

Creek Notice — Section 2.4.4.b

Creek Permits — Section 2.4

Creek Rights of Entry — Section 2.4

Creek/Trail Improvements — Section 2.4

Creek Trail — Section 2.4.3

Developer — Preamble, Section 1.1.2

Development Agreement — Preamble

Development Agreement Legislation — Recital B

Director — Section 5.2

Effective Date — Section 1.3.1

EIR — Section 1.4.1

Event of Default — Section 7.1

Event Space — Section 2.9.2.b

Existing Traffic Impact Fee — Section 3.6.3.a

Finding of Compliance — Section 5.3.1

Finding of Noncompliance — Section 5.3.2

First Phase I Building COO — Section 2.5.2

First Phase II Building COO — Section 2.4.4.a

Force Majeure Events — Section 11.2

Future Rules — Section 3.4.2(a)

General Plan — Recital H

Government Offices — Section 11.2

Government Closure — Section 11.2

Gross Occupiable Building Space— Section 2.2.2.a

Impact Fees — Section 3.6.3

Ministerial Approvals — Section 3.5.1(c)

MMRP — Recital I

Mortgage — Section 10.1

Mortgagee — Section 10.1

Non-Intended Prevailing Wage Requirement — Section 11.5

Notice of Default — Section 7.1

Off-Site Creek Improvements — Section 2.4.2

Office/R&D — Section 3.6.3(a)

Outside Release Date — Section 2.4.4.d

Parties — Preamble

Party — Preamble

PD Plan — Section 1.4.4

PD Rezoning — Section 1.4.3

Phase I — Recital E

Phase I Surface Parking— Section 4.3

Phase II — Recital E

Phase III — Recital E

Planning Commission — Recital L

Processing Fees — Section 3.6.2

Project — Recital E

Project Approvals — Section 1.4

Project Creek Improvements — Section 2.4.1

Project Event Space — Section 2.9.2.b

Property — Recital D

Public Artwork — Section 2.3

Replacement Provisions — Section 11.5

Revised Traffic Impact Fee — Section 3.6.3.a

State or Federal Law — Section 3.4.3

Subsequent Approvals — Section 1.4.10

TDMP — Section 1.4.8

Tentative Parcel Map — Section 1.4.6

Term — Section 1.3.2

TMA — Section 2.6

TMA Plan — Section 2.6.1

TMA District — Section 3.7

Transfer — Section 9.1

Tree Permit — Section 1.4.7

Vested Elements — Section 3.2

Vision Plan — Recital H

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