

- 4.3 Taxes and Assessments. As of the Effective Date, assessments are in effect and applicable to the Property or the Project as shown on the latest property tax bill for the Property. City is not aware of any pending efforts to initiate or consider new or increased assessments that would apply to the Property or the Project. City may impose and Developer agrees to pay any and all existing, new, modified or increased taxes and assessments, other than Impact Fees, imposed on the Property or the Project in accordance with the laws in effect as of the date due, at the rate in effect at the time of payment. 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; provided, Developer acknowledges being aware of all taxes and assessments in effect as of the Effective Date, and Developer accepts and agrees that it shall not protest or challenge their imposition on the Property and the Project. 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 Agreement, then at City's election, taking into consideration City's expectations as to when it would receive Developer's payment of such fees or assessments, either (a) the 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, or (b) 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 Agreement.

ARTICLE 5

DEVELOPER COMMUNITY BENEFITS COMMITMENTS

- 5.1 Public Benefits. Developer shall perform and provide the public benefit obligations described in this Section 5.1 in consideration for the rights and benefits conferred by City to Developer under this Agreement, which exceed those dedications, conditions, and exactions that may be imposed under Applicable Law.

5.1.1 POPA Easement. Prior to the issuance of final Certificate of Occupancy for the Project, Developer shall execute and record an easement and maintenance agreement providing for public access to both (1) the approximately 5,000 square foot portion of the central outdoor plaza located between the gate and Old County Road ("**Front Plaza**") and (2) the approximately 12,000 square foot amenity courtyard between the buildings ("**Courtyard**"), each as shown in the Project Approvals and maintenance of the Front Plaza and Courtyard by Developer, in substantially the form attached hereto as Exhibit D ("**POPA Easement**"). The POPA Easement shall require Developer to allow public access to the Courtyard during daylight hours (sunrise to sundown) and to the Front Plaza during the longer of daylight hours (sunrise to sundown) or the hours that the tenant of the Community Benefit Space is open to the public, subject to the Developer's reasonable rules and regulations related to safety, maintenance, and repairs, as well as improvements/renovations that meet the spirit and intent of the POPA Easement and subject to the reasonable approval of the Community Development Director.

The POPA Easement shall allow Developer to temporarily exclude the public or temporarily limit public access to portions of the Front Plaza and/or Courtyard if necessary to address safety concerns and perform maintenance and repairs to improvements within or immediately adjacent to the Front Plaza and to allow a reasonable limited number of private events per year for tenants of the Project and for non-profit or community events. The POPA Easement shall require Developer to maintain the Front Plaza and Courtyard at all times and indemnify and hold City harmless from any and all Claims arising from or relating to the design, construction, or maintenance of the Front Plaza and the public's use thereof. The POPA Easement shall terminate in the event that (i) the Project is demolished or (ii) 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 the Front Plaza and Courtyard, provided that the POPA Easement shall not terminate in the event of demolition and reconstruction of any building or buildings in the Project following a casualty.

5.1.2 Recycled Water Pipe. At the time of issuance of a certificate of occupancy, the water infrastructure for the Project shall include dual plumbing for potable and recycled water, with separate pipe lines composed of appropriate material to accommodate recycled water.

5.2 Community Benefits.

5.2.1 Developer shall design and construct the improvements for the Project listed below and pay the following amounts listed below (“**Community Benefits**”) in exchange for the approval of the Planned Development zoning designation and a Planned Development Plan that allow Developer to construct buildings with a greater height and Floor Area Ratio than permitted under the Property's previous Heavy Industrial zoning designation. These approvals have a value of Fourteen Million Dollars (\$14,000,000). The Parties agree that the Community Benefits have a value of Seven Million Six Hundred Ninety Thousand Dollars (\$7,690,000).

(a) Design and construction of a space to be occupied by a Restaurant/Coffee Shop (or other Community Benefit Use pursuant to Section 5.2.4 below); ~~along with four (4) designated parking spaces for customers (not employees) in the surface parking lot during occupancy (“**Exclusive Retail Customer Spaces**”) in the location shown in the Project Approvals:~~

- Approximately 1,500 square feet
- Value: \$555,000

(b) Design and construction of a Bike/Pedestrian Path as shown in the Project Approvals:

- Approximately 4,240 square feet
- Value: \$148,400

(c) Provide public parking on nights ~~and~~, weekends, and federal holidays on the surface parking lot.

- Approximately 46 parking spaces, ~~subject to the Exclusive Retail Customer Spaces~~
- Value: \$690,000

(d) Addition of one dual head electric vehicle charging hub to provide two (2) charging stations on the surface parking lot.

(e) Designate seven (7) parking spaces for use by persons visiting the Community Benefit Space (defined below), Front Plaza, and/or Courtyard during the hours that any of the Community Benefit Space (defined below), Front Plaza, and/or Courtyard are open to the public, in addition to the times described in (c).

~~(e)~~(f) Payments:

- Green Energy Efficiency & Sustainability Fund- \$500,000
- Community Improvement & Recreation Fund - \$3,000,000
- Downtown Improvements Fund - \$2,796,000

5.2.2 Design and Construction of Community Benefit Space and Bike/Pedestrian Path. The Community Benefit Space (defined in Section 5.2.4) and Bike/Pedestrian Path referenced in Section 5.2.1 shall be designed and submitted for approval as part of the Project building permit application, and shall be constructed in substantial conformance with the Project Approvals. The Parties shall enter into a Subdivision Improvement Agreement with respect to the Bike/Pedestrian Path and any work related to the Bike/Pedestrian Path that occurs on public property will be a public work subject to Prevailing Wage Laws.

5.2.3 Timing of Payments. The payments set forth in Section 5.2.1(c) shall be made in full prior to the issuance of the first building permit for the Project.

5.2.4 Community Benefit Space Timing. The South Phase building shown in the Project Approvals (“**South Building**”) shall include space suitable for a Restaurant/Coffee Shop Use or Community Benefit Use (“**Community Benefit Space**”). The final certificate of occupancy for the South Building must be requested (except as provided in this Section 5.2.4) and issued prior to the issuance of a final certificate of occupancy for any other building or structure in the Project. In the event that Developer has commenced construction of the South Building and a final certificate of occupancy for any other building or structure is requested by the Developer, the Developer will deposit \$555,000 with the City which shall be returned in full without interest to the Developer upon issuance of the final certificate of occupancy for the South Building that includes the Community Benefit Space in compliance with this Agreement. In the event that the South Building has commenced construction under this Section, but does not receive its final certificate of

Developer shall also provide one dual head electric vehicle charging hub to create two (2) charging stations and designate two (2) parking spaces in the surface parking lot for vehicles using the charging stations. The charging stations shall be available for use by the public during the same hours as the other spaces in the surface parking lot. The public parking spaces available nights and ~~the weekends,~~ the seven (7) parking spaces available for use by visitors of the Front Plaza, Courtyard, or Community Benefit Space, and the two (2) parking spaces with charging stations shall be in substantially the locations shown on the ~~conceptual~~ conceptual plan attached hereto as Exhibit G.

ARTICLE 6

ANNUAL REVIEW

6.1 Periodic Review.

6.1.1 As required by the City of San Carlos City Code Section 18.37.080, Developer shall be required to demonstrate compliance with the provisions of the Agreement at least once a year at which time the Community Development Director shall review the Agreement.

6.1.2 The annual review shall be conducted as provided herein:

- (a) Documentation of Compliance. By the last business day of January of each year, the Developer shall provide documentation of its compliance with the Agreement during the previous calendar year. Promptly upon receipt of Developer's documentation of compliance, the City's Community Development Director shall review the documentation and determine, on the basis of substantial evidence, whether the Developer has complied with the provisions of this Agreement.
- (b) Finding of Compliance. If the Community Development Director, on the basis of substantial evidence, finds compliance by Developer with the provisions of this Agreement, the Community Development Director shall issue a finding of compliance, which shall be in recordable form and may be recorded with the County Recorder after conclusion of the review.
- (c) Finding of Noncompliance. If the Community Development Director finds Developer has not complied with the provisions of this Agreement, the Community Development Director may issue a finding of noncompliance which may be recorded by the City with the County Recorder after it becomes final. The Community Development Director shall specify in writing to Developer the respects in which applicant has failed to comply, and shall set forth terms of compliance and specify a reasonable time for Developer to meet the terms of compliance.

HVAC	
HVAC	<ul style="list-style-type: none"> - HVAC duct chase distribution into space based on standard retail use. All distribution within space by tenant. Any extraordinary requirements necessitated because of Tenant's use of the Premises will be at the expense of Tenant. Roof top space provided for tenant's equipment
Electrical Signs	<ul style="list-style-type: none"> - One (1) J-box for signage located at the main entrance to space. Tenant is responsible for all connections, equipment and devices as required by Tenant design or local jurisdiction codes, including exit signs.
Medium-Voltage Electrical Distribution	<ul style="list-style-type: none"> - Electrical service provided at main electrical room to be 400 Amps (120/208V, 3-phase, 4-wire) Distribution to space by tenant - Lighting and exit signs for the space including new restroom that meet the local jurisdiction codes.
Communications	<i>Tenant will be required upon the "Delivery of the Premises" to switch all utility account(s) responsibility and all billing information into their name.</i>
Telephone System	<ul style="list-style-type: none"> - 2" telephone/data conduit to space with pull string. - Tenant is responsible for all connections, equipment and devices as required by Tenant design or local jurisdiction codes and for provisioning telephone and data service.
Water Utility	<ul style="list-style-type: none"> - Landlord to provide the water submeter (including capacity charges) with a 5/8" restricted submeter size. Any upsizing of the submeter is the responsibility of the Tenant (in no event shall exceed a 1" submeter) and shall be reimbursed to the Landlord. - Tenant is responsible for activation of the water submeter account with the local utility. - Tenant is responsible for all plumbing distribution and equipment.
Electric Meter	<ul style="list-style-type: none"> - LL provided meter socket. - Tenant is responsible for activation their account in their name with the local utility company.
Parking Spaces	LL will designate four (4) parking spaces on the surface parking lot for the exclusive customer use during Tenant's business hours. Tenant and Tenant employees may not use these spaces.

4. Default and Remedies. Breach of, failure, or delay by Owner to perform any term or condition of this POPA Agreement shall constitute a default. In the event of any default of any term, condition, or obligation of this POPA Agreement, City shall give the Owner 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 30 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 30-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 City 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 POPA Agreement and the City may bring any action at law or in equity to enforce the terms of this POPA Agreement. In addition, if the default is the failure to meet the Maintenance Standards set forth in Section 3 above, the City, in addition to its other rights and remedies, may enter and perform or cause its agents and contractors to enter the Easement Areas and perform the required maintenance and City costs shall be reimbursed by Owner within thirty (30) days of billing by City or City may record a lien or place the amount owed as a special assessment against the Property in the amount of the work performed.

5. Temporary Closure for Maintenance and Events. Owner reserves the right to temporarily exclude the public from or limit public access to all or portions of the Easement Areas if necessary to address safety concerns and perform maintenance and repairs to improvements within or immediately adjacent to the Front Plaza. In addition, the Owner reserves the right to exclude the public from all or portions of the Easement Areas a reasonable limited number of times per year for events or exclusive use of the Easement Areas by tenants of the Project (each individually a “Tenant Event” and collectively, “Tenant Events”), not to exceed four (4) Tenant Events per year for the Front Plaza Easement Area, and not to exceed two (2) times per month for the Courtyard Easement Area. Each such Tenant Event may not last more than 24 hours (although two Tenant Events could allow a total of 48 hours), including any set up or tear down/clean-up activities. In addition to the Tenant Events, ~~non-profit or non-profits or other not-for-profit~~ community organizations with principal offices within the City limits (“Community Groups”) may hold private events on the Front Plaza Easement Area and/or Courtyard Easement Area ~~up to~~ six (6) times per year (each no more than 24 hours per event including set up/clean up) under a typical form of event agreement (i.e. event details, cleaning fee, insurance and liability protection for the Owner, organization and City). Prior to the opening of the Front Plaza and Courtyard to tenants and the public, Developer shall designate an individual to whom Community Groups may make reservation requests or develop an electronic system for submission of reservation requests. The Developer shall require tenants to contact the same person or use the same electronic system for Tenant Events reservation requests. Reservation requests shall not be unreasonably withheld, conditioned, ~~each to be approved by the Owner, Tenant and City Community Development Director or delayed.~~ During events held by non-profit or community organizations, event attendees and event volunteers and staff shall be permitted to park in the surface parking lot at no charge. In the event of planned maintenance or a Tenant Event during which the Front Plaza Easement Area and/or Courtyard Easement Area will be closed, Owner shall post signs within the Front Plaza Easement Area and/or Courtyard Easement Area at least forty-eight (48) hours prior to the closure for a Tenant Event or for planned maintenance. In the case of an emergency or repairs requiring

WHEREAS, the Development Agreement requires Owner and City to execute a parking agreement under which Owner will share the Project's commercial parking with the public by offering nightly and weekend public parking in the surface parking lot.

WHEREAS, the Parties desire to execute and record this Agreement to make the Project's commercial parking 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 Surface Parking.* The surface parking lot, together with those areas necessary for ingress and egress to the surface parking lot as more particularly described in **Exhibit B** (collectively, the "Public Parking Area"), shall be available for use by the general public during the Hours of Public Use (as said term is defined below). The Public Parking Area shall include one dual head electric vehicle charging hub to provide two (2) charging stations and Owner shall designate two (2) parking spaces for vehicles using the charging stations. Owner may modify the Public Parking Area from time to time, in its sole discretion, 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. Owner shall designate seven (7) spaces within the Public Parking Area ("Plaza Public Parking Spaces") to be available for use by members of the public visiting the Front Plaza, Courtyard, or the retail tenant during (i) the hours that any of the publicly accessible open spaces or the retail tenant are open to the public and (ii) the Hours of Public Use. The Plaza Public Parking Spaces shall be marked with conspicuous signage.

1.2. *Hours of Public Use.* The Public Parking Area shall be open to the general public Monday through Friday from 6:00 p.m. to 11:00 p.m.; and Saturday, Sunday, and Federal holidays from ~~7:00 a.m.~~ sunrise to 11:00 p.m. and during such other hours that Owner and City have agreed to grant a non-profit or community organization the right to hold an event in the courtyard in the Project pursuant to the POPA Agreement (collectively the "Hours of Public Use"). At all other times, 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 multiple conspicuous signs, as approved by the City, in the Public Parking Area to inform the public of the Hours of Public Use.

1.3. *Parking Rates.* Owner shall make the Public Parking Area available at no cost to the public. 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