DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") dated for reference purposes as of _____, 2022 ("**Agreement Date**"), is entered into by and between MENLO BCSP 405 Property LLC_, a Delaware limited liability company ("**Developer**") and the CITY OF SAN CARLOS, a California municipal corporation ("**City**"). Developer and City are sometimes referred to individually herein as a "**Party**" and collectively as the "**Parties**."

R E C I T A L S

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties. The following recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Article 1 of this Agreement.

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risks of development, the Legislature of the State of California enacted section 65864 *et seq*. of the Government Code ("**Development Agreement Statute**"), which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement, establishing certain development rights in the property.

B. In accordance with the Development Agreement Statute, the City Council has adopted a development agreement ordinance codified as Chapter 18.37 of the City's Municipal Code ("**Development Agreement Ordinance**"), which authorizes the execution of development agreements and sets forth the required contents and form of those agreements. The provisions of the Development Agreement Statute and the City's Development Agreement Ordinance are collectively referred to herein as the "**Development Agreement Law**."

C. Developer is the fee owner of that certain real property located at 405 Industrial Road designated as APN 046-051-080 and more particularly described and depicted in Exhibits A and B attached hereto and incorporated herein ("**Property**"). The Property is currently developed with public storage buildings.

D. Developer intends to develop the Property with a 6-story building with four stories of life science office/research and development space (206,708 square feet) above 2 levels of above grade parking (89,907 square feet) and two levels of below grade parking as more particularly shown in those certain Planned Development Plans, prepared by RMW,dated Aug.

8, 2022, entitled "Planning Package for 405 Industrial Road" ("**Project**").

E. This Agreement sets forth, among other things, the applicable fees, policies and zoning requirements that apply to development of the Project, and provides Developer with a vested right to develop the Project on the Property in accordance with the Planned Development Zoning and the Planned Development Plan approved by the City for the Project as well as the City's General Plan, and the other relevant land use designations and zoning provisions applicable to the Property, each as in effect as of the Effective Date, and more particularly defined in Recital H, below as "Existing Approvals" and this Agreement.

F. The City has prepared a draft Initial Study and Mitigated Negative Declaration report for the Project ("**MND**") and held hearings pursuant to the California Environmental Quality Act ("**CEQA**") (Public Resources Code section 21000 *et seq*.). On August 9, 2022, the City circulated the Initial Study/Mitigated Negative Declaration for public review and comment for a period through September 8, 2022. City published the Response to Comments together with the Initial Study/Mitigated Negative Declaration on September 15, 2022.

G. The Planning Commission on September 19, 2022, recommended the following action by adoption of Resolutions Nos. PC2022-09 and PC 2022-10 to the City Council: certification of the Initial Study/Mitigated Negative Declaration (MND), approval of the Planned Development Zoning and Planned Development Plan and this Agreement. The Planning Commission approved the Design Review and Transportation Demand Management Plan subject to the approval of the Planned Development Zoning and Plan.

H. Prior to or concurrently with approval of this Agreement, the City has taken or will take the following actions to review and plan for the future development and use of the Project (collectively, the "**Existing Approvals**"):

1. Certification of the MND by Resolution No. _____ adopted by the City Council on _____;

2. Approval of rezoning by Ordinance No. _____ adopted by the City Council on _____;

I. Under this Agreement, Developer will provide substantial public benefits in connection with the Project including off-site landscape improvements along Industrial Road and a contribution of $4,200,000 to the City in community benefits, all as more specifically described in Article 6 and Exhibit D to this Agreement.

J. City has determined that by entering into this Agreement, City will further the purposes set forth in the Development Agreement Ordinance and City will benefit from public benefits provided by the Developer to complete improvements within the GESC neighborhood, with specific projects yet to be determined by the City Council.

K. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Project Approvals, thereby encouraging planning for, investment in, and commitment to use and development of the Property. Development of the Property in

accordance with the terms of this Agreement will in turn provide substantial public benefits to the City, thereby achieving the goals and purposes for which the Development Agreement Law was enacted.

L. The terms and conditions of this Agreement have undergone review by City staff, the Planning Commission and the City Council at publicly noticed meetings, and have been found to be fair, just and reasonable, in conformance with the Development Agreement Law and the goals, policies, standards and land use designations specified in the General Plan, and consistent with the requirement under Government Code Section 65867.5, and further, the City Council finds that the economic interests of City's citizens and the public health, safety and welfare will be best served by entering into this Agreement.

M. City has approved this Agreement by Ordinance No. _____, adopted by the City Council on _____ ("**Enacting Ordinance**").

NOW, THEREFORE, in consideration of the mutual promises, covenants and provisions set forth herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

A G R E E M E N T

ARTICLE 1.

DEFINITIONS

1.1 Definitions.

"**Administrative Amendment**" is defined in Section __.

"**Advanced Costs**" is defined in Section 5.3.2.

"**Agreement**" means this Development Agreement.

"**Agreement Date**" means the reference date identified in the preamble to this Agreement.

"**Annual Review Form**" is defined in Section 7.2.1.

"**Applicable City Regulations**" means (a) the permitted uses of the Property, the maximum density and/or total number of residential units, 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 other terms and conditions of development applicable to the Property as set forth in the General Plan of the City on the Effective Date, the Municipal Code of the City on the Effective Date, and the other ordinances, policies, rules, regulations, standards and specifications of the City in effect on the Effective Date; (b) New City Laws that apply to the Property as set forth in Section 4.3.3, 4.3.4 or 4.3.6 herein; and (c) regulations that apply to the Property as set

forth in Section 4.3.1 and 4.3.2 herein.

"**Applicable Law**" means (a) all State and Federal laws and regulations applicable to the Property and the Project as enacted, adopted and amended from time to time and (b) the Applicable City Regulations.

"**CEQA**" is defined in Recital F.

"**Changes in the Law**" is defined in Section 4.3.6.

"**City**" means city of San Carlos, a California municipal corporation.

"**City Council**" means City Council of the City of San Carlos.

"**Claims**" means liabilities, obligations, orders, claims, damages, fines, penalties and expenses, including attorneys' fees and costs.

"Connection Fees" means those fees charged by City or by a utility provider to utility users as a cost for connecting to water, sanitary sewer and other applicable utilities.

"**Default**" is defined in Section 12.1.

"**Developer**" means MENLO BCSP 405 Property LLC .

"**Development Agreement Law**" is defined in Recital B.

"**Development Agreement Ordinance**" is defined in Recital B.

"**Development Agreement Statute**" is defined in Recital A.

"**Effective Date**" is defined in Section 3.1.

"**Enacting Ordinance**" is defined in Recital M.

"**Exactions**" means exactions imposed by City as a condition of developing the Project as more particularly set forth in Section 5.2 and in connection with Subsequent Project Approvals, as set forth in 11.2 of this Agreement which may include requirements for acquisition, dedication or reservation of land; and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, or impositions made under Applicable City Regulations. For purposes of this Agreement, Exactions do not include Impact Fees.

"**Existing Approvals**" is defined in Recital H.

"**General Plan**" means the General Plan of the City of San Carlos in effect as of the Effective Date.

"**Impact Fees**" means the monetary fees and impositions more particularly set forth in Section 5.1.1, below and in Exhibit C, attached, hereto, other than taxes and assessments, charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of a development project or development of the public facilities and services related to a development project, including any "fee" as that term is defined by Government Code section 66000(b). For purposes of this Agreement, a monetary fee or imposition that meets both the definition of an Impact Fee and the definition of an Exaction will be considered an Impact Fee.

"**Initial Term**" is defined in Section 3.2.1.

"**Insubstantial Amendment**" is defined in Section 9.2.

"**Litigation Challenge**" is defined in Section 11.6.2.

"Mitigated Negative Declaration (MND)" is defined in Recital F.

"**MMRP**" means the Mitigation Monitoring and Reporting Program adopted by the City Council in connection with its certification of the MND.

"**Mortgage**" is defined in Section 8.1.

"**Mortgagee**" is defined in Section 8.1.

"**Municipal Code**" means the Municipal Code of the City of San Carlos in effect as of the Effective Date.

"**New City Laws**" means and includes any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through the power of initiative or otherwise) after the Effective Date.

"**Notice**" is defined in Section 13.7.

"**Other Agency Fees**" is defined in Section 5.1.4.

"**Other Agency Subsequent Project Approvals**" means Subsequent Project Approvals to be obtained from entities other than City.

"**Party/Parties**" is defined in the introductory paragraph preceding the Recitals of this Agreement.

"**Permitted Delay**" is defined in Section 13.2.

"**Planning Commission**" means the Planning Commission of the City of San Carlos.

"**Prevailing Wage Components**" is defined in Section 5.3.2.

"**Prevailing Wage Laws**" is defined in Section 5.3.

"**Processing Fees**" means all fees charged on a City-wide basis to cover the cost of City processing of development project applications, including any required supplemental or other further environmental review, plan checking (time and materials) and inspection and monitoring for land use approvals, design review, grading and building permits, General Plan maintenance fees, and other permits and entitlements required to implement the Project, which are in effect at the time those permits, approvals or entitlements are applied for, and which fees are intended to cover the City's actual and reasonable costs of processing the foregoing.

"**Project**" is defined in Recital D.

"**Project Approvals**" means the Existing Approvals and, when and as approved in accordance with the terms of this Agreement, the Subsequent Project Approvals.

"**Property**" is defined in Recital C.

"**Subsequent Project Approvals**" is defined in Section 11.1.

"**Term**" is defined in Section 3.2.1.

ARTICLE 2.

GENERAL PROVISIONS

2.1 Ownership of Property The Parties hereby acknowledge that, as of the Effective Date, Developer has a a fee interest in the Property.

ARTICLE 3.

EFFECTIVE DATE; OPERATIVE DATE; TERM; FORCE MAJEURE; REPRESENTATIONS

3.1 Effective Date. This Agreement shall become effective the date that is thirty (30) days after the date the Enacting Ordinance is adopted ("**Effective Date**").

3.2 Term.

3.2.1 Term of Agreement. The "**Term**" of this Agreement shall commence on the Effective Date and shall expire on the tenth (10th) anniversary of the Effective Date, unless extended or earlier terminated as provided herein.

3.2.2 Effect of Termination. Upon the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions set forth in Section 12.7

3.3 City Representations and Warranties. City represents and warrants to Developer that:

3.3.1 City is a municipal corporation, and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

3.3.2 The execution and delivery of this Agreement and the performance of the obligations of City hereunder have been duly authorized by all necessary City Council action and all necessary approvals have been obtained.

3.3.3 This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

3.3.4 The foregoing representations and warranties are made as of the Agreement Date. During the Term of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this 3.3 not to be true, immediately give written Notice of such fact or condition to Developer.

3.4 Developer Representations and Warranties. Developer represents and warrants to City that:

3.4.1 Developer is duly organized, validly existing and in good standing under the laws of the State of California and has all necessary powers under the laws of the State of California to own property interests and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

3.4.2 The execution and delivery of this Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary corporate, partnership or company action and all necessary shareholder, member or partner approvals have been obtained.

3.4.3 This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

3.4.4 Developer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Developer's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Developer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Developer's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

The foregoing representations and warranties are made as of the Agreement Date. During the Term of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this 3.4 not to be true, immediately give written Notice of such fact or condition to City.

ARTICLE 4.

DEVELOPMENT OF PROPERTY

4.1 Vested Rights. City hereby grants to Developer a vested right to develop and construct the Project at the Property, including all on-site and off-site improvements authorized by, and in accordance with, the Project Approvals. Except as otherwise provided in this Agreement, no New City Laws that conflict with this Agreement, the Applicable City Regulations, or the Project Approvals shall apply to the Project or the Property. For purposes of this Section and Section 4.3, the word "**conflict**" means any modifications that purport to: (i) limit the Project Approvals, including but not limited to the permitted uses of the Property, the maximum density and intensity of use (including but not limited to floor area ratios of buildings and the overall maximum number of residential units), or the maximum height and size of proposed buildings; (ii) impose requirements for reservation or dedication of land for public purposes or requirements for infrastructure, public improvements, or public utilities, other than as provided in the Project Approvals; (iii) impose conditions upon development of the Property other than as permitted by Applicable Law, Changes in the Law, and the Project Approvals; (iv) limit the timing, phasing, sequencing, or rate of development of the Property; (v) limit the location of building sites, grading or other improvements on the Property in a manner that is inconsistent with the Existing Approvals; (vi) limit or control the ability to obtain public utilities, services, infrastructure, or facilities (provided, however, nothing herein shall be deemed to exempt the Project or the Property from any water use rationing requirements that may be imposed on a City-wide basis from time to time in the future or be construed as a reservation of any existing sanitary sewer or potable water capacity); (vii) require the issuance of additional permits or approvals by the City other than those required by Applicable Law and the Existing Approvals; (viii) increase the permitted Impact Fees or add new Impact Fees, except as permitted by Section 5.1 of this Agreement; (ix) establish, enact, increase, or impose against the Project or the Property any special taxes or assessments other than those specifically permitted by this Agreement, including Section 5.5 (x) apply to the Project any New City Laws that are not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites (i.e., to all for sale residential projects, to all rental residential projects, to all office projects, to all mixed-use projects etc.); or (xi) impose against the Project any condition, dedication or other Exaction not specifically authorized by Applicable Law or the Project Approvals. To the extent that New City Laws conflict with the vested rights granted pursuant to this Agreement, they shall not apply to the Property or the Project, except as provided in 4.3, below.

4.2 Development and Design Standards. The Project shall be developed in conformance with the Existing Approvals and Applicable City Regulations, including the General Plan and the zoning in effect as of the Effective Date. The design, permitted uses, FAR, maximum height and size of buildings and development standards shall all be in accordance with the Existing Approvals and Applicable City Regulations.

4.3 Reservations of Authority. Notwithstanding any other provision of this Agreement to the contrary, the following regulations and provisions shall apply to the development of the Project:

4.3.1 Procedural Rules. Regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure then applicable in City at the time of building permit application;

4.3.2 Uniform Construction Codes. Regulations governing construction standards and specifications, including City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in City at the time of building permit application;

4.3.3 New City Laws Not in Conflict. New City Laws applicable to the Property or Project, which do not conflict with this Agreement, including Developer's vested rights under **Error! Reference source not found.** above;

4.3.4 New City Laws- Health and Safety. New City Laws which may be in conflict with this Agreement, but which are necessary to protect the physical health and safety of the public.

4.3.5 Exactions. Exactions for Subsequent Project Approvals, if applicable, permitted by Section 11.2.

4.3.6 Changes in the Law. As provided in Section 65869.5 of the Development Agreement Law, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or by changes in laws, regulations, plans or policies of special districts or other governmental entities, other than the City, created or operating pursuant to the laws of the State of California ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law. Following the meeting between the Parties, the provisions of this 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 Changes in the Law. In such event, this Agreement together with any required modifications shall continue in full force and effect. Nothing in this Agreement shall preclude Developer from contesting by any available means (including administrative or judicial proceedings) such Changes in the Law or their applicability to the Project and, in the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect, unless the Parties mutually agree otherwise.

4.4 Regulation by Other Public Agencies. Developer acknowledges and agrees that 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 Agreement does not limit the authority of such other public agencies. Developer shall, at the time required by Developer in accordance with Developer's construction schedule, apply for all such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. Developer shall also pay all required fees when due to such public agencies. Developer acknowledges that City does not control the amount of any such fees. City shall reasonably cooperate with Developer in Developer's effort to obtain such permits and approvals; provided, however, City shall have no obligation to incur any costs, without compensation or reimbursement by Developer, or to amend any policy, regulation or ordinance of City in connection therewith.

4.5 Life of Project Approvals. The term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Agreement or the term otherwise applicable to such Project Approvals.

4.6 Initiatives. If any New City Law is enacted or imposed by an initiative or referendum, which New City Law would conflict with the Project Approvals or this Agreement or reduce the development rights or assurances provided by this Agreement, such New City Law shall not apply to the Property or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. Without limiting the generality of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development, 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 subdivision maps, use permits, building permits, occupancy permits, or other entitlements to use that are approved or to be approved, issued or granted by City shall apply to the Property or Project. Developer agrees and understands that City does not have authority or jurisdiction over any other public agency's ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may affect the Project. City shall reasonably cooperate with Developer and, at Developer's expense, shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. City, except to submit to vote of the electorate initiatives and referendums required by law to be placed on a ballot and fulfill any legal responsibility to defend a ballot measure passed by its voters, shall not support, adopt or enact any New City Law, or take any other action which would violate the express provisions or spirit and intent of this Agreement.

4.7 Timing of Development. Developer shall meet its obligation to provide the public benefits described in Article 6 within the times provided therein. However, and not in limitation of any of the foregoing, since 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 consider, and expressly provide for, the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the desire of the Parties hereto to avoid that result. Therefore, notwithstanding the adoption of an initiative after the Effective Date by City's electorate to the contrary, the Parties acknowledge that, except as otherwise provided for in the Existing Approvals, Developer shall have the vested right (but not the obligation) to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its business judgment.

4.8 Expansion of Development Rights. If any New City Laws or Changes in Law expand, extend, enlarge or broaden Developer's rights to develop the Project, then, (a) if such law is mandatory, the provisions of this Agreement shall be modified as may be necessary to comply or conform with such new law, and (b) if such law is permissive, the provisions of this Agreement may be modified, upon the mutual agreement of Developer and City. 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 in the case of a mandatory law or to discuss whether to prepare a proposed modification in the case of a permissive law. Developer shall have the right to challenge City's refusal to apply any new law mandating expansion of Developer's rights under this Agreement, and in the event such challenge is

successful, this Development Agreement shall be modified to comply with, or conform to, the new law.

4.9 No Reservation of Sanitary Sewer or Potable Water Capacity. City has found the Project to be consistent with the General Plan which anticipates that there will be sufficient potable water and sanitary sewer capacity to serve future development contemplated by the General Plan, including the Project. However, nothing in this Agreement is intended to exempt the Project from any water use rationing requirements that may be imposed on a City-wide basis from time to time in the future or be construed as a reservation of any existing sanitary sewer or potable water capacity.

ARTICLE 5.

OTHER RIGHTS AND OBLIGATIONS OF THE PARTIES

5.1 Fees.

5.1.1 Impact Fees. City and Developer understand and agree that the Impact Fees associated with the Project are as set forth in Exhibit C, attached below, are a material consideration for Developer agreeing to develop the Project, whereby the Developer shall pay the Impact Fees prior to issuance of the building permit for the Existing Approvals. Once the Impact Fees are paid Developer shall not be required to re-pay the Impact fees in the event of an act of God which requires re-construction of the project according to the Existing Approvals. For the period commencing on the Effective Date and continuing until expiration of the Impact Fee Limitation Period (defined below), Developer shall pay when due all existing Impact Fees applicable to the Project in accordance with this Agreement in effect as of the Agreement Date at the lower of (i) the rates in effect as of the Agreement Date, including all existing fee escalation provisions or (ii) the rates in effect when such existing Impact Fees are due and payable, and shall not be required to pay any escalations in such Impact Fees in excess of the fee escalation provisions in any Impact Fee in effect as of the Agreement Date or new Impact Fees enacted or established after the Agreement Date. As used herein the term ("**Impact Fee Limitation Period**") means the period commencing on the Effective Date and expiring on the 10th anniversary thereof. Except as otherwise provided in this Section 5.1.1, Developer agrees to pay when due any and all existing, , increased or modified Impact Fees, at the rates then in effect at the time building permits are issued on any or all portions of the Project so long as any new fees or increases in existing fees from the amount existing as of the Agreement Date are uniformly applied by City to all substantially similar types of development projects and properties (i.e., to all for-sale residential projects, to all rental residential projects, to all office projects, etc.) and are consistent with the provisions of applicable California law, including the provisions of Government Code Section 66000 *et seq*., and all applicable nexus and rough proportionality tests and other legal requirements. Developer retains all rights to protest an imposition, fee, dedication, reservation, or other exaction, as set forth in California Government Code Section 66020.

5.1.2 Processing Fees. Subject to Developer's right to protest and/or pursue a challenge in law or equity to any new or increased Processing Fees, City may charge and Developer agrees to pay all Processing Fees which are in effect on a City-wide basis at the time permits, approvals or entitlements are applied for.

5.1.3 Connection Fees. Developer shall pay connection fees assessed by utility providers and other agencies assessing such fees at the rates in effect from time to time.

5.1.4 Other Agency Fees. Nothing in this Agreement shall preclude City from collecting fees from Developer that are lawfully imposed on the Project by another agency having jurisdiction over the Project, which the City is required to collect pursuant to Applicable Law ("**Other Agency Fees**").

5.2 Exactions. City may impose and Developer shall comply with those Exactions required by this Agreement, the Existing Approvals, and Subsequent Project Approvals, if applicable, in accordance with Section 11.2 below.

5.3 Prevailing Wage.

5.3.1 Prevailing Wage Indemnity. Developer shall defend (with counsel reasonably acceptable to the City), indemnify, assume all responsibility for, and hold harmless City Parties from and against any and all present and future Claims arising out of or in any way connected with Developer's or its contractors' or subcontractors' obligations to comply with all Prevailing Wage Laws, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781.

5.3.2 Release of City. Developer hereby waives and releases City Parties from any and all manner of Claims or other compensation whatsoever, in law or equity, of whatever kind or nature, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, now existing or which may in the future arise, including lost business opportunities or economic advantage, and special and consequential damages, arising out of, directly or indirectly, or in any way connected with Developer's obligation to comply with all Prevailing Wage Laws in connection with the Prevailing Wage Components. Developer is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.
>
> INITIALS: DEVELOPER _____

5.4 Other Financing Mechanisms. Without limitation of and in addition to the provisions of this Agreement, upon Developer's request, City will give good faith consideration to establishing any other mechanism that is legal and available to the City to aid in financing the construction of Project facilities and infrastructure. These mechanisms may include, without limitation, direct funding of condemnation costs and construction costs, acquisition of improvements, establishing reserve accounts to fund capital improvement program projects, Landscaping and Lighting Districts, Geological Hazard Abatement Districts or other similar mechanisms. Any such request by Developer must be made to the City Manager in written form

and must outline the purposes for which any such mechanism will be established or issued, the general terms and conditions upon which it will be established or issued and a proposed timeline for its establishment or issuance. City reserves full and complete discretion with respect to consideration of any proposed alternative funding mechanisms and nothing in this Agreement is intended to or shall limit City's ability to approve or disapprove such mechanisms in its sole discretion and nothing in this Agreement is intended to or shall prejudge or commit to City regarding the findings and determinations to be made with respect thereto.

5.5 Taxes and Assessments. Developer covenants and agrees to pay prior to delinquency all existing taxes and assessments and any and all new taxes or assessments that are adopted after the Effective Date and which conform to the terms of this Agreement, including this Section. As of the Agreement Date, City is unaware of any pending efforts to initiate, or consider applications for new or increased special taxes or assessments covering the Property, or any portion thereof. City shall retain the ability to initiate or process applications for the formation of new assessment districts or imposition of new taxes covering all or any portion of the Property. 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 adopted by or after Citywide voter approval, or approval by landowners subject to such taxes or assessments, and are imposed on other land and projects of the same category within the jurisdiction of City in a reasonably proportional manner as determined by City, and, as to assessments, only if the impact thereof does not fall disproportionately on the Property as compared to the benefits accruing to the Property as indicated in the engineers report for such assessment district. 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.

5.5.1 Tax Localization Plan and Requirements.

1. Developer shall use best efforts to require the incorporation of requirements substantially in the form set forth in Exhibit H in its contracts with general contractors performing work at the Project Site, in connection with causing sales and use tax arising from purchases of materials, fixtures or equipment for the Project to be allocated to the City, to the extent allowed by law (the "Tax Localization Plan"). Developer shall use best efforts to direct its general contractors to comply with the Tax Localization Plan. In order to monitor compliance with the Tax Localization Plan, Developer shall designate a representative for the purpose of semiannual review with the City of relevant documents and filings with the State Board of Equalization.

2. Subject to the succeeding sentence, as between Developer and City, Developer shall be responsible for the administrative expenses incurred in connection with the implementation of the Tax Localization Plan.

3. Developer will assist City at Developer's sole expense in defending against any administrative proceedings instituted by the State Board of Equalization or the California Department of Tax and Fee Administration (CDTFA) relating to whether the City is the proper point-of -sale location.

ARTICLE 6.
PUBLIC BENEFITS

In consideration of the rights and benefits conferred by City to Developer under this Agreement, upon issuance of a certificate of occupancy for the Existing Approvals, Developer shall perform and provide the Public Benefit obligations described in Exhibit D, some of which exceed those dedications, conditions, and exactions which may be imposed under Applicable Law. Once the Public Benefits are paid, Developer shall not be required to re-pay the Public Benefit fees in the event of an act of God which requires re-construction of the project according to the Existing Approvals.

ARTICLE 7.
ANNUAL REVIEW

7.1 Periodic Review. As required by California Government Code Section 65865.1 and the Development Agreement Ordinance, City and Developer shall review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project every twelve (12) months to determine good faith compliance with this Agreement. Specifically, City's annual review shall be conducted for the purposes of determining good faith compliance by Developer with its obligations under this Agreement. Each annual review shall also document Developer's progress toward completion of Project components.

7.2 Process. The annual review shall be conducted as provided in the Development Agreement Law and City's Development Agreement Ordinance as follows.

7.2.1 By the anniversary of the Effective Date each year, the Developer shall provide documentation of its compliance with the Agreement during the previous calendar year, including a completed Annual Review Form in the form provided in Exhibit E ("**Annual Review Form**"). Promptly upon receipt of Developer's completed Annual Review Form, the City's Community Development Director shall review the Annual Review Form and shall reasonably determine, on the basis of substantial evidence, whether the Developer has complied with the provisions of this Agreement.

7.2.2 If the City's Community Development Director reasonably finds good faith compliance by Developer with the terms of this Agreement, the City's Community Development Director or his or her designee shall so notify Developer in writing in a form that may be recorded at Director's discretion. If the City's Community Development Director reasonably finds that Developer has not complied in good faith with the terms of this Agreement, the City's Community Development Director shall notify Developer in writing in a form that may be recorded when final and that specifies the respects in which Developer has failed to comply, reasonable terms of compliance, and a reasonable time for Developer to meet the terms of compliance. If Developer does not act in good faith to comply with any terms of compliance within the prescribed time limits, this Agreement shall be subject to termination or modification pursuant to Section 7.2.3.

7.2.3 Within seven (7) days after 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 pay fees and charges for the filing and processing of the appeal in amounts established by resolution of the City Council. The appellant shall specify the reasons for the appeal. The issuance of a finding of compliance or finding of noncompliance by the City's Community Development Director and the expiration of the appeal period without appeal, or the confirmation by the City Council of the issuance of the finding on such appeal, shall conclude the review for the applicable period and such determination shall be final.

7.2.4 If a finding of noncompliance does not include terms of compliance, or if Developer does not act in good faith to comply with the terms of compliance within the time specified for compliance, the City's Community Development Director may refer the development agreement to the City Council for termination or modification. The City Council shall conduct a public hearing after the time specified for compliance. After the public hearing, the City Council may terminate the development agreement, modify the finding of noncompliance, or rescind the finding of noncompliance, and issue a finding of compliance.

7.3 No Waiver. Failure of City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

ARTICLE 8.
MORTGAGEE PROTECTION

8.1 Mortgagee protection. This 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 Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the 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 Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

8.2 Mortgagee Not Obligated. No Mortgagee (including one who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise) shall have any obligation to construct or complete construction of improvements, or to guarantee such construction or completion; provided, however, that unless a new entitlement application for a new project is approved, a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with this Agreement and the other Project Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by this Agreement, or otherwise under the Project Approvals. Except as otherwise provided in this Section 8.2, all of the terms and conditions contained in this Agreement and the other Project Approvals shall be binding upon

and effective against and shall run to the benefit of any person or entity, including any Mortgagee, who acquires title or possession to the Property, or any portion thereof.

8.3 Notice of Default to Mortgagee. If City receives a notice from a Mortgagee requesting a copy of any Notice of Default given Developer hereunder and specifying the address for service thereof, then City agrees to use its diligent, good faith efforts to deliver to such Mortgagee, concurrently with service thereon to Developer, any Notice of Default given to Developer.

8.4 Right to Cure. In the event of a Default by Developer, any Mortgagee shall have the right to remedy, or cause to be remedied, such Default within sixty (60) days following the later to occur of (i) the date of Mortgagee's receipt of the Notice of Default referred to in **Error! Reference source not found.** above, or (ii) the expiration of the period provided herein for Developer to remedy or cure such Default, and City shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by Developer; provided, however, that (a) if such Default is not capable of being cured within the timeframes set forth in this Section 8.4 and Mortgagee commences to cure the Default within such timeframes, then Mortgagee shall have such additional time as is required to cure the Default so long as Mortgagee diligently prosecutes the cure to completion and (b) if possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the Mortgagee shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy.

8.5 No Supersedure. Nothing in this Article 8 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Article 8 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 8.3.

8.6 Technical Amendments to Article 8. City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for the acquisition and construction of the Project on the Property or any refinancing thereof and to otherwise cooperate in good faith, at Developer's expense, to facilitate Developer's negotiations with lenders.

ARTICLE 9.
AMENDMENT

9.1 Amendment of Agreement By Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the Parties hereto or their successors-in-interest or assigns.

9.2 Insubstantial Amendments to Agreement. Any amendment to this Agreement which, in the context of the overall Project contemplated by this Agreement, does not substantially affect (i) the Term of this Agreement; (ii) permitted uses of the Property; (iii)

provisions for the reservation or dedication of land, if applicable; (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions; (v) the approved FAR; (vi) Property or the maximum height or size of proposed buildings; or (vi) the nature, timing of delivery, or scope of public improvements required by the Existing Approvals or Subsequent Project Approvals (if applicable) , shall be deemed an "**Insubstantial Amendment**" and shall not, except to the extent otherwise required by law or this Agreement, require notice or public hearing before the parties may execute an amendment hereto. The Director shall have the authority to execute an Insubstantial Amendment or, in his or her reasonable discretion, seek approval of an Insubstantial Amendment by City resolution.

9.3 Requirement for Writing. No modification, amendment or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing which refers expressly to this Agreement and is signed by duly authorized representatives of both Parties or their successors.

9.4 Amendments to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute as those provisions existed as of the Agreement Date. No amendment or addition to those provisions which would materially affect the interpretation or enforceability of this Agreement shall be applicable to this Agreement, unless such amendment or addition is specifically required by the California State Legislature, 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 Agreement. Following the meeting between the Parties, the provisions of this 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 Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this 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 Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

9.5 Operating Memoranda. The provisions of this 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 Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer may 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 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 9.5 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 9.1 or Section 9.2 above. The

City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City.

ARTICLE 10.
ASSIGNMENT

10.1 Assignment. Because of the necessity to coordinate development of the entirety of the Property pursuant to plans for the Project, particularly with respect to the provision of on- and off-site public improvements and public services and benefits, certain restrictions on the right of Developer to assign or transfer its interest under this Agreement with respect to the Property, or any portion thereof, are necessary in order to assure the achievement of the goals, objectives and public benefits of the Project and this Agreement. Developer agrees to and accepts the restrictions set forth in this Article 10 as reasonable and as a material inducement to City to enter into this Agreement.

10.2 Notice of Assignment. Developer shall provide the City with written notice of any proposed transfer or assignment of Developer's rights or obligations hereunder (each, an "**Assignment**") at least thirty (30) days prior to such Assignment and request City's reasonable consent to such Assignment, as provided herein. Each such notice of proposed Assignment shall be accompanied by reasonable (non-confidential) evidence of the corporate, limited liability company or other legal entity's existence and good standing and a proposed form of Assignee's assumption of Developer's obligations hereunder substantially in the form of Exhibit F, which would be recorded in the Official Records of San Mateo County concurrent with the transfer. Developer shall pay the actual costs borne by City in connection with its review of the proposed Assignment, including the costs incurred by the City Attorney's Office.

10.3 Release of Developer. Notwithstanding any sale, transfer or assignment of all or a portion of the Property, Developer shall continue to be obligated under this Agreement as to all or the portion of the Property so transferred unless City has consented to the Assignment as provided above. If the required City consent is given, then Developer shall be released from any further liability or obligation under this Agreement related to the transferred Property provided: (i) neither Developer nor Assignee is in default under this Agreement at the time of such transfer; (ii) Developer and Assignee have executed and acknowledged and delivered to City for recordation in the Official Records of the County of San Mateo an assignment and assumption agreement substantially in the form of Exhibit G attached hereto; and (iii) the Assignee has expressly assumed for the benefit of City the obligations of Developer as to the portion of the Property so transferred. No release of Developer shall be effective unless and until each of the above conditions have been met. Notwithstanding anything to the contrary contained in this Agreement, if an Assignee Defaults under this Agreement, such Default shall not constitute a Default by Developer (or any other Assignee) with respect to any other portion of the Property hereunder and shall not entitle City to terminate or modify this Agreement with respect to such other portion of the Property.

10.4 Partial Assignment. Subject to the limitations set forth in this Article 10, in the event of a transfer of a portion of the Property, Developer shall have the right to assign its rights, duties and obligations under this Agreement that are applicable to the transferred portion, and retain all rights, duties and obligations applicable to the retained portions of the Property. Upon

Developer's request, City, at Developer's expense, shall cooperate with Developer and any proposed Assignee to allocate rights, duties and obligations under this Agreement and the Project Approvals between the assigned portion of the Property and the retained Property. Assignee shall succeed to the rights, duties and obligations of Developer only with respect to the parcel or parcels, or portion of the Property so purchased, transferred, ground leased or assigned, and Developer shall continue to be obligated under this Agreement with respect to any remaining portions of the Property retained by Developer and not assigned.

10.5 Successive Assignment. In the event there is more than one Assignment under the provisions of this Article 10, the provisions of this Article 10 shall apply to each successive Assignment and Assignee.

10.6 Other Permitted Transfers. The provisions in this Article 10 shall not be deemed to prohibit or otherwise restrict Developer from (i) granting easements or licenses or modifying existing easements to facilitate development of the Property consistent with the Project Approvals; (ii) encumbering the Property or any portion hereof or of the improvements thereon by a Mortgage securing financing with respect to the Property or Project; (iii) transferring all or a portion of the Property pursuant to a foreclosure, conveyance in lieu of foreclosure, or other remedial action in connection with a Mortgage, or to any transferee from a Mortgagee or owner of the Property upon foreclosure or after a conveyance in lieu of foreclosure; (iv) transferring any completed components of the Project, provided the City has issued an Occupancy Permit for such components and all Impact and Public Benefit fees have been paid according to this Agreement.

ARTICLE 11.
COOPERATION AND IMPLEMENTATION

11.1 Subsequent Project Approvals. Certain subsequent land use approvals, entitlements, and permits other than the Existing Approvals, may be necessary or desirable for implementation of the Project ("**Subsequent Project Approvals**"). The Subsequent Project Approvals may include, the following: major amendments of the Existing Approvals that are not Insubstantial Amendments as described in Section 9.2, above, , grading permits, building permits, sewer and water connection permits, certificates of occupancy, lot line adjustments, site plans, development plans, land use plans, building plans and specifications, parcel maps and/or subdivision maps, conditional use permits, variances, design review, demolition permits, improvement agreements, encroachment permits, and any amendments to, or repealing of, any of the foregoing. As required by Government Code Section 65867.5, any tentative map prepared for the Project shall comply with the water supply verification requirements set forth in Government Code Section 66473.7.

11.2 Scope of Review of Subsequent Project Approvals. With the Existing Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Applications for Subsequent Project Approvals that are consistent with this Agreement and the Existing Approvals shall be processed and considered in a manner consistent with the vested rights granted by this Agreement and shall be deemed to be tools to implement those final policy decisions, and shall be reasonably approved by City so long as they are consistent with this Agreement and the Existing Approvals. While City expressly reserves its

discretion with respect to all Subsequent Project Approvals, City agrees that it shall not use its authority in considering any application for a Subsequent Project Approval to change the policy decisions reflected by the Existing Approvals, including by reducing the density or changing the permitted uses of the Property or the permitted rate of development, or otherwise to prevent development of the Project as set forth in the Existing Approvals.

City reserves reasonable discretion to impose appropriate reasonable future Exactions in connection with issuance of Subsequent Project Approvals, provided that in exercising its discretion in connection with consideration of Subsequent Project Approvals, City agrees that City shall not revisit the fundamental policy decisions reflected by the Existing Approvals or impose any Exactions that would (i) conflict with the Applicable City Regulations or the Existing Approvals as set forth in Section 4.1 herein unless expressly permitted by Sections 4.3 or Section 11.6.6 Subject to the foregoing, Exactions imposed on Subsequent Project Approvals shall be reasonable and may include dedications of land for public uses and requirements that Developer construct or cause the construction of ancillary public rights-of-way and internal streets, utilities, and public facilities, including all applicable in-tract subdivision improvements. At such time as any Subsequent Project Approval applicable to the Property is approved by City, then such Subsequent Project Approval shall become subject to all the terms and conditions of this Agreement applicable to Project Approvals and shall be treated as a "Project Approval" under this Agreement.

11.3 Processing.

11.3.1 Developer Covenant. Developer acknowledges that City cannot begin processing applications for Subsequent Project Approvals until Developer submits complete applications on a timely basis. Developer shall use diligent good faith efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Project Approvals.

11.3.2 City Covenant. Upon submission by Developer of all appropriate applications and Processing Fees for any pending Subsequent Project Approval, City shall, to the full extent allowed by Applicable Law, promptly and diligently, subject to City ordinances, policies and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Developer's currently pending Subsequent Project Approval applications including: (i) providing at Developer's expense and subject to Developer's request and prior approval, reasonable overtime staff assistance, additional staff and/or staff consultants for concurrent, expedited planning and processing of each pending Subsequent Project Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such pending Subsequent Project Approval application.

11.4 Other Agency Approvals. 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 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 Agreement in all respects when dealing with any such agency regarding the Property. City shall

cooperate with Developer, at Developer's expense, to the extent appropriate and as permitted by law, in Developer's efforts to obtain, as may be required, Other Agency Subsequent Project Approvals.

11.5 Mitigation Measures. Developer shall, at its sole cost and expense, comply with the MMRP requirements as applicable to the Property and Project.

11.6 Cooperation in the Event of Legal Challenge.

11.6.1 No Delay. The filing of any third party lawsuit(s) against City or Developer relating to this Agreement, the Project Approvals or construction of the Project shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Project Approvals, unless the third party obtains a court order preventing the activity, and in such case, the Term shall toll unless or until the dispute is resolved City shall not stipulate to or cooperate in the issuance of any such order.

11.6.2 Cooperation by Parties. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement or the Project Approvals ("**Litigation Challenge**"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information. If Developer opts not to contest or defend such Litigation Challenge, City shall have no obligation to do so, but shall have the right to do so at its own expense.

11.6.3 Potential Joint Defense. If Developer desires to contest or defend a Litigation Challenge and the Parties determine to undertake a joint defense or contest of such Litigation Challenge: i) the Parties will cooperate in the joint defense or contest of such challenge; ii) Developer shall select the attorney(s) to undertake such defense, subject to City's approval, which shall not be unreasonably withheld; iii) Developer will take the lead role in defending such Litigation Challenge; iv) upon Developer's request, City shall enter into a joint defense agreement in a form reasonably acceptable to the City Attorney to facilitate the sharing of materials and strategies related to the defense of such Litigation Challenge without waiver of attorney client privilege; v) Developer shall reimburse City, within forty-five (45) days following City's written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge.

11.6.4 Potential Separate Defense. If Developer desires to contest or defend any Litigation Challenge and if at any time one or both of the Parties determine that they require separate representation: i) Developer shall take the lead role in defending such Litigation Challenge; ii) Developer shall be separately represented by legal counsel of its choice; iii) in any action or proceeding, City shall be separately represented by the legal counsel of its choice, selected after consultation with Developer, with reasonable costs of such representation to be paid by Developer; iv) Developer shall reimburse City, within forty-five (45) days following City's written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge; and v) upon Developer's request, City shall enter into a joint defense agreement in a form reasonably acceptable to the City Attorney to facilitate the sharing of materials and strategies related to the defense of such Litigation Challenge without waiver of attorney client privilege.

11.6.5 Cost Awards and Proposed Settlements. Developer shall indemnify, defend, and hold harmless City Parties from and against any damages, attorneys' fees or cost awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation. Any proposed settlement of a Litigation Challenge by a Party shall be subject to the approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement or any Project Approvals, the settlement shall not become effective unless such amendment or modification is approved by City in accordance with Applicable Law, and City reserves its full legislative discretion with respect thereto.

11.6.6 Revision to Project. In the event of a court order issued as a result of a successful Litigation Challenge, the 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 Project Approvals, or (ii) any conflict with the Project Approvals or frustration of the intent or purpose of the Project Approvals.

11.7 Subsequent CEQA Review. The City has prepared and certified the MND, which evaluates the environmental effects of the Project, and has imposed all feasible mitigation measures to reduce the significant environmental effects of the Project. The Parties understand that the MND is intended to be used not only in connection with the Existing Approvals, but also, to the extent legally permitted, in connection with any necessary Subsequent Project Approvals. However, the Parties acknowledge that certain Subsequent Project Approvals may legally require additional analysis under CEQA. Nothing contained in this Agreement is intended to prevent or limit the City from complying with CEQA. In acting on Subsequent Project Approvals, City will rely on the MND to the fullest extent permissible by CEQA as determined by City in its reasonable discretion. In the event supplemental or additional review is required for a Subsequent Project Approval, City shall limit such supplemental or additional review to the scope of analysis mandated by CEQA in light of the scope of City's reasonable discretion to be exercised in connection with the Subsequent Project Approval. Developer acknowledges that, if the City determines based upon supplemental or additional CEQA review that the Project will result in new significant effects or substantially increase the severity of effects that were identified in the MND, City may require additional feasible mitigation measures necessary to mitigate such impacts. In the event further mitigation measures are identified by such additional environmental review, City may require, and Developer shall comply at its expense with, all feasible mitigation measures necessary to substantially lessen new or substantially more severe significant environmental impacts of the Project, which were not foreseen at the time of execution of this Agreement.

ARTICLE 12.
DEFAULT; REMEDIES; TERMINATION

12.1 Breach and Default. Subject to Permitted Delay and a Mortgagee's right to cure under Section 8.4, failure by a Party to perform any material action or covenant required by this Agreement (not including any failure by Developer to perform any term or provision of any

other Project Approval) within thirty (30) days following receipt of written Notice from the other Party specifying the failure shall constitute a "**Default**" under this Agreement; provided, however, that if the failure to perform cannot be reasonably cured within such thirty (30) day period, a Party shall be allowed additional time as is reasonably necessary to cure the failure so long as such Party commences to cure the failure within the thirty (30) day period and thereafter diligently prosecutes the cure to completion. Any Notice of Default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Default, all facts constituting evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in Default for purposes of (a) termination of this Agreement, (b) institution of legal proceedings with respect thereto, or (c) issuance of any approval with respect to the Project. The waiver by either Party of any Default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

12.2 Termination. In the event of a Default by a Party, the non-defaulting Party shall have the right to institute legal proceedings pursuant to Section 12.3 and/or terminate this Agreement upon giving notice of intent to terminate pursuant to Government Code Section 65868. Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code Section 65867. Following consideration of the evidence presented in said review before the City Council, a Party alleging Default by the other Party may give written notice of termination of this Agreement to the other Party. Termination of this Agreement shall be subject to the provisions of Section 12.7 hereof. In the event that this Agreement is terminated pursuant to Section 7.2.4 herein or this Section 12.2 and the validity of such termination is challenged in a legal proceeding that results in a final decision that such termination was improper, then this Agreement shall immediately be reinstated as though it had never been terminated.

12.3 Legal Actions.

12.3.1 Institution of Legal Actions. In addition to any other rights or remedies, a Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the terms of this Agreement.

12.3.2 Acceptance of Service of Process. In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Clerk of City or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon Developer's registered agent for service of process, or in such other manner as may be provided by law.

12.4 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the

same Default or any other Default by the other Party, except as otherwise expressly provided herein.

12.5 No Damages. In no event shall a Party, or its boards, commissions, officers, agents or employees, be liable in damages for any Default under this Agreement, it being expressly understood and agreed that the sole legal remedy available to a Party for a breach or violation of this 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 Agreement by the other Party, or to terminate this 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 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 Agreement by the other Party.

12.6 Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which is not provided for by this Agreement or Applicable Law, a Party shall, at the request of the other Party, meet with designated representatives of the requesting Party promptly following its request. The Parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this Section 12.6 shall in any way be interpreted as requiring that Developer and City reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the Parties to such meetings.

12.7 Survival. In the event this Agreement expires or is terminated, neither Party shall have any further rights or obligations hereunder, except for those obligations of Developer set forth in Section 5.4 (Prevailing Wage Requirements), Section 11.6 (Cooperation in the Event of Legal Challenge) or expressly set forth herein as surviving the expiration or termination of this Agreement. The termination or expiration of this Agreement shall not affect the validity of the Project Approvals (other than this Agreement).

12.8 Effects of Litigation. In the event litigation is timely instituted, and a final judgment is obtained, which invalidates in its entirety this Agreement, neither Party shall have any obligations whatsoever under this Agreement, except for those obligations which by their terms survive termination hereof.

12.9 California Claims Act. Compliance with the procedures set forth this ARTICLE 12 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 13.
MISCELLANEOUS

13.1 Incorporation of Recitals; Introductory Paragraph; Exhibits. The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals and the Exhibits attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

13.2 Permitted Delay. Performance by either of the Parties of an obligation hereunder shall be excused during any period of "**Permitted Delay**." Permitted Delay shall mean delay beyond the reasonable control of a Party caused by (a) calamities, including without limitation earthquakes, floods, and fire; (b) civil commotion; (c) riots or terrorist acts; (d) strikes or other forms of material labor disputes; (e) shortages of materials or supplies; or (f) vandalism. A Party's financial inability to perform or obtain financing or adverse economic conditions generally shall not be grounds for claiming a Permitted Delay. The Party claiming a Permitted Delay shall notify the other Party of its intent to claim a Permitted Delay, the specific grounds of the same and the anticipated period of the Permitted Delay within thirty (30) business days after the occurrence of the conditions which establish the grounds for the claim. If notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. The period of Permitted Delay shall last no longer than the conditions preventing performance ("Duration of Permitted Delay"). The Permitted Delay shall extend the Term of this Agreement by the Duration of Permitted Delay.

13.3 Indemnity. Developer shall indemnify, at City's request defend, and hold the City Parties harmless from and against any and all Claims arising directly as a result of Developer's acts, omissions, negligence or willful misconduct in connection with Developer's performance under this 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 any City Party.

13.4 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

13.5 Construction. Each reference herein to this Agreement or any of the Existing Approvals or Subsequent Project Approvals shall be deemed to refer to the Agreement, Existing Approval or Subsequent Project Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement. This Agreement has been reviewed and revised by legal counsel for City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of

this Agreement. Unless the context clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the others; (iii) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (iv) "or" is not exclusive; (v) "include," "includes" and "including" are not limiting and shall be construed as if followed by the words "without limitation," and (vi) "days" means calendar days unless specifically provided otherwise.

13.6 Covenants Running with the Land. Except as otherwise more specifically provided in this Agreement, this Agreement and all of its provisions, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein or portion thereof, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code section 65868.5.

13.7 Notices. Any notice or communication required hereunder between City and Developer, or assignee, if applicable ("**Notice**") must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a Notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by registered or certified mail, such Notice shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom Notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such Notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a Notice shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written Notice to the other Party hereto, designate any other address in substitution of the address to which such Notice shall be given. Such Notices shall be given to the Parties at their respective addresses set forth below.

To City:

With a copy to:

To Developer: Jane Vaughan, Menlo Equities
2765 Sand Hill Road, Menlo Park, CA 94025

Cathy Mossman, Beacon Capital Partners

With a copy to:

13.8 Counterparts and Exhibits; Entire Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original. This Agreement, together with the Project Approvals and attached Exhibits, constitutes the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter hereof.

13.9 Recordation of Agreement. Pursuant to California Government Code Section 65868.5, no later than ten (10) days after the Effective Date, the City Clerk shall record an

executed copy of this Agreement in the Official Records of the County of San Mateo. Thereafter, if this Agreement is terminated, modified or amended, the City Clerk shall record notice of such action in the Official Records of the County of San Mateo.

13.10 No Joint Venture or Partnership. It is specifically understood and agreed to by and between the Parties hereto that: (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any public improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Existing Approvals or Subsequent Project Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, Existing Approvals, Subsequent Project Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

13.11 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by the other Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act by the other Party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in the future.

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

13.13 California Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of San Mateo, except for actions that include claims in which the Federal District Court for the Northern District of the State of California has original jurisdiction, in which case the Northern District of the State of California shall be the proper venue.

13.14 City Approvals and Actions. Whenever reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

13.15 Estoppel Certificates. A Party may, at any time during the Term of this Agreement, and from time to time, deliver written Notice to the other Party requesting such Party to certify in writing that, to the best of knowledge of the certifying Party, (i) this Agreement is in

full force and effect and a binding obligation of the Parties; (ii) this 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 Agreement, or if in default, to describe therein the nature and amount of any such defaults; and (iv) any other information reasonably requested. The requesting Party shall be responsible for all reasonable costs incurred by the Party from whom such certification is requested and shall reimburse such costs within thirty (30) days of receiving the certifying Party's request for reimbursement. 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. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that this Agreement is in full force and effect and no modification or default exists. The City Manager 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.

13.16 No Third Party Beneficiaries. Notwithstanding Articles 8 and 10, City and Developer hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

13.17 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City and that all necessary board of directors', shareholders', partners', city councils' or other approvals have been obtained.

13.18 Time of the Essence. Time is of the essence of this Agreement. All references to time in this Agreement shall refer to the time in effect in the State of California.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the day and year first above written.

CITY:

CITY OF SAN CARLOS, a California municipal corporation

By: _____
Jeff Maltbie, City Manager
[signature must be notarized]

APPROVED AS TO FORM:

By: _____
Gregory Rubens, City Attorney

ATTEST:

By: _____
Crystal Mui, City Clerk

DEVELOPER:

_____,

a _____ _____

By: Menlo BCSP 405 Holdings LLC, a Delaware limited liability company,

its Sole Member

By: Menlo BCSP 405 JV LLC,

a Delaware limited liability company,

its Sole Member

By: Menlo Equities Development Company XI LLC,

a Delaware limited liability company,

its Manager

By: ME Manager Holdings LLC,

a Delaware limited liability company,

its Managing Member

By: Omega Point LLC,

a California limited liability company,

its Sole Member

By: Diamant Investments LLC,

a Delaware limited liability company,

its Sole Member

By: _____

Name: Richard Holmstrom

Title: Manager

Exhibit A: LEGAL DESCRIPTION

Real property in the City of San Carlos, County of San Mateo, State of California, described as follows:

PARCEL 2, AS SHOWN ON THE PARCEL MAP ENTITLED, "PARCEL MAP, BEING A PORTION OF THE LANDS CONVEYED BY DEED RECORDED IN BOOK 2903 OF OFFICIAL RECORDS AT PAGE 125", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON APRIL 5, 1973 IN BOOK 20 OF PARCEL MAPS AT PAGE 23.

APN: 046-051-080 JPN: 046-005-051-08A

Exhibit B: Plat Map

Exhibit C: Impact Fees as of Effective Date

Note: Per Section 5.1.1 of the Agreement, the amount of the Impact Fees listed below are effective as of the date of the Agreement and are to be paid at time of building permit. The City annually reviews and/or adjusts its impact fees, thus the amount of the fees are based upon the City's impact fees in effect at the time plans are submitted for a building permit.

405 INDUSTRIAL ROAD - IMPACT FEES	Square Footage	Office Square Footage	Lab Square Footage
Total Approved Square Footage	292,612	40%	60%
Building Occupiable Square Footage	206,706	82,682	124,024
Above Grade Parking Structure Square Footage	85,906		
Existing Mini-Storage - to be demolished	45,000		

405 INDUSTRIAL ROAD PROJECT IMPACT FEES (based upon building occupiable square footage only)	Square Footage	GPD .12 Use Coefficient	Fee	Amount
Sewer Capacity Fee - Occupiable SF minus Existing SF	161,706	19,405	$6,454 for first 100 gal + $65/gal/day	1,261,261
Sewer Connection Fee - Occupiable SF minus Existing SF	161,706	19,405	$7.91	$153,491
Commercial Linkage - Housing Mitigation Fee	206,706		$20.00	$4,134,120
Child Care Impact Fee (subject to City Council approval)	206,706		$5.00	$1,033,530
	Office Fee/1,000 SF	Lab Fee/1,000 SF	Existing Mini Storage Fee/1,000 SF	Total
Traffic Impact - Occupiable SF minus Existing SF	7,307	3,113	($1,080)	$941,646
TOTAL 405 INDUSTRIAL ROAD IMPACT FEES				**$7,524,048**

IRV #4887-2417-2078 v1

Exhibit D: Public Benefits

Community Benefits: Contribute $4,200,000 to the City in community benefits. The use of the funds to be determined by the City Council with input from the neighborhood.

Offsite Improvements:

- New landscaping at the northeast corner of Industrial Road and Holly Street on City owned property, consistent with the East Side Innovation District Plan goals of a green boulevard along Industrial Road.

- Replacement planting of 17 trees along the western side of Industrial Road from Holly Street to Taylor Way, installed within the existing planters.

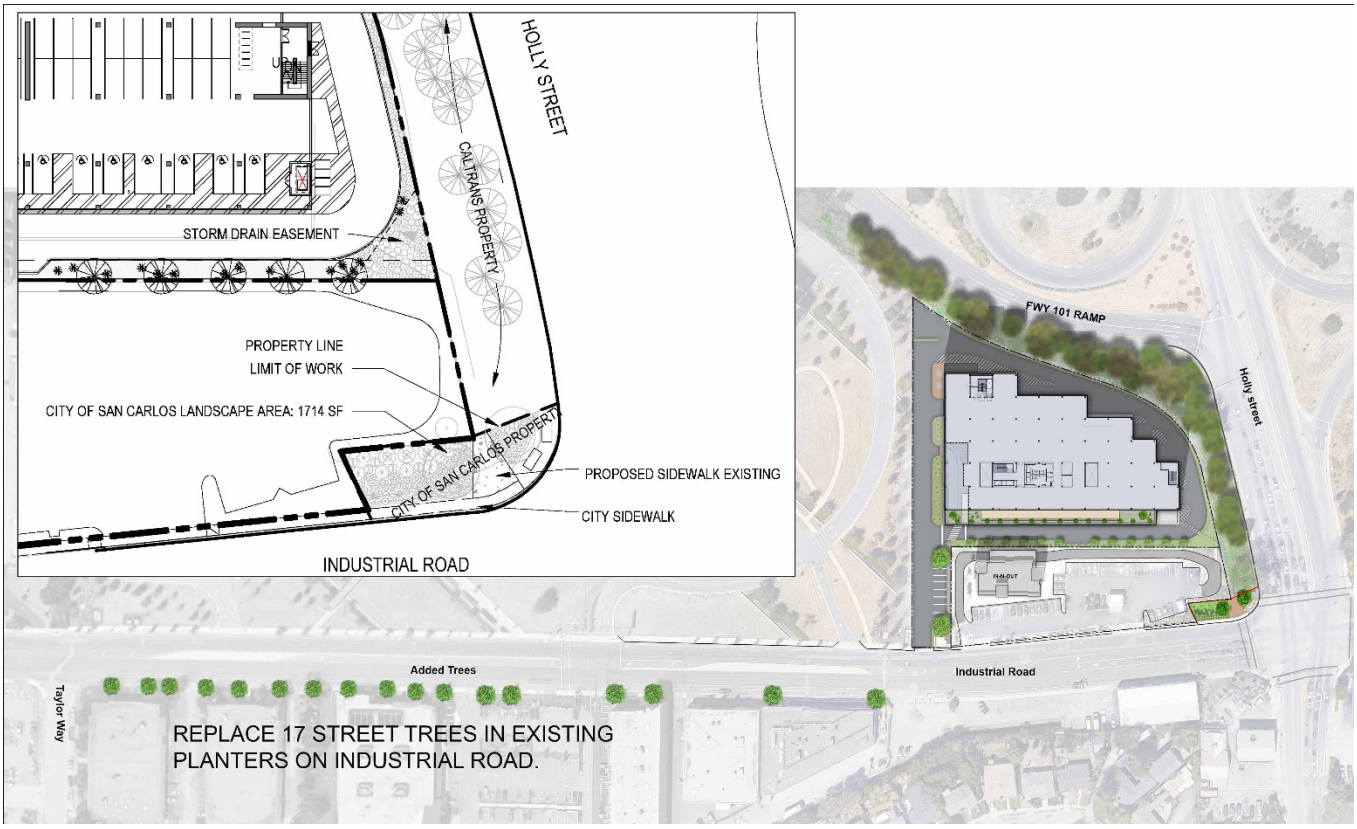

Exhibit E: Annual Review Form

[City to provide]

Exhibit F: Form Notice of Assignment

[City to provide]

Exhibit G: Form Assignment and Assumption Agreement

[City to provide]

Exhibit H

TAX LOCALIZATION PLAN

California Sales and Use Tax. As Owner so directs, Contractor and all Subcontractors shall take measures to ensure that, to the fullest extent permitted by applicable laws and regulations, all sales, purchases, and uses of tangible personal property subject to sales or use tax are located at the Site for purposes of state and local sales and use tax law, with the objective of maximizing the allocation to the City of construction sales and use tax revenues derived from the Project.

The measures taken by the Contractor or Subcontractors to satisfy this provision shall be subject to Developer's prior review and approval, and all calculations and payments are subject to an audit by City. Without limiting the generality of the foregoing, Contractor shall:

(i) obtain all permits and licenses necessary to maximize the City's allocation of construction sales and use taxes derived from the Project, including but not limited to California Seller's Permits, Use Tax Direct Payment Permits, and any other license or permit necessary or desirable to maximize the City's allocation of sales and use taxes derived from the Project;

(ii) designate, and require all Subcontractors to designate, the Site as the place of sale of all "fixtures" furnished and/or installed as part of the Project;

(iii) designate, and require all Subcontractors to designate, the Site as the place of use of all "materials" used in the construction of the Project; and

(iv) allocate, and require all Subcontractors to allocate, the local sales and use taxes derived from the Construction Contract and all Subcontracts directly to the City.

If required by Developer, Contractor shall establish a purchasing entity or purchasing office located in the City. Contractor shall complete and file, and require all Subcontractors to complete and file, any forms the State Board of Equalization (the "SBOE") or the California Department of Tax and Fee Administration (CDTFA) required to affect the allocation of sales and use tax required by this Section pursuant to applicable regulations of the SBOE/CDTFA, as amended or supplemented from time to time. If required by Developer, Contractor shall, and shall cause its Subcontractors to, maintain a monitoring report or other documentation, in such detail as Owner may specify, tracking the amount and categories of construction sales and use tax revenues allocated to the City under this Section.

In this clause the "City" means the City San Carlos and "Site" means the Property. "Owner" means Developer.