ORDINANCE NO. 2022-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN BRUNO AND NEW SHIDAI DEVELOPMENT, LLC, FOR THE GLENVIEW TERRACE RESIDENTIAL SUBDIVISION PROJECT (APNs: 019-042-150, 019-042-160, AND 019-042-170) (DA21-001)

SECTION 1. FINDINGS.

WHEREAS, 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 (the "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.

WHEREAS, a Development Agreement can provide certainty, definition and commitment as to proposed development and as to necessary public improvements required by development.

WHEREAS, as authorized by Governmental Code Section 65865(c), the City has adopted City Council Resolution 1986-77 (the "Development Agreement Resolution") authorizing the execution of Development Agreements and establishing the procedures and requirements for said Development Agreements within the City.

WHEREAS, New Shidai Development, LLC ("Applicant") is the owner of that certain 3.28 acre site located at 850 Glenview Drive and 2880 and 2890 San Bruno Avenue W. in the City of San Bruno and more particularly described as Assessor's Parcel Numbers 019-042-150, 019-042-160, and 019-042-170 (the "Property");

WHEREAS, Applicant desires to develop on the Property the Glenview Terrace Residential Subdivision Project, which consists of a residential subdivision of 29 single-family homes with associated roadways and infrastructure (the "Project");

WHEREAS, in order to develop the Project, Applicant has submitted an application to the City of San Bruno for approval of the following: (1) an amendment to the San Bruno General Plan to change the land use designation of a portion of the Property from Low Density Residential to Medium Density Residential; (2) an amendment to the Zoning Ordinance to change the zoning district of a portion of the Property from Single Family Residential (R-1) to Planned Development (P-D) and amend the existing P-D District; (3) a Development Plan for the Property; (4) a Planned Development Permit and Architectural Review Permit; (5) a Vesting Tentative Map merging the existing three lots and subdividing the Property into 29 single-family parcels and common area parcels (6) and a Development Agreement; and

WHEREAS, New Shidai Develoment, LLC is a corporation organized under the laws of the State of California and is in good standing thereunder and is a qualified applicant to do business in the State of California and enter into a Development Agreement;

WHEREAS, the Development Agreement commits the Developer to certain negotiated requirements, referred to as "Public Benefits." These include the following:

- $400,000 total public benefit payment into the City's General Fund.

WHEREAS, in exchange for the substantial Public Benefits of the Project, Owner desires to receive assurances that City shall grant permits and approvals required for the development of the Project over the Project's estimated three-year development horizon, in accordance with procedures provided by law and in this Agreement, and that Owner may proceed with the Project in accordance with the Existing City Laws. In order to effectuate these purposes, the Parties desire to enter into this Agreement;

WHEREAS, the proposed Development Agreement is consistent with the San Bruno General Plan, and Zoning Ordinance (as amended by the Project Approvals), for the reasons set forth in the respective resolutions and ordinance approving the Project;

WHEREAS, a Notice of Public Hearing was mailed on June 17, 2022, and duly posted in the *San Mateo Times* on Saturday, June 18, 2022, for consideration of a Planned Development Permit and Tentative Map; and

WHEREAS, the Planning Commission held a Public Hearing on the Development Agreement on April 19, 2022 and on said date, the Public Hearing was opened, held and closed; and

WHEREAS, on April 19, 2022, the Planning Commission adopted Resolution 2022-02 recommending that the San Bruno City Council adopt an Initial Study and Mitigated Negative Declaration (IS/MND), dated April 2021, and Mitigation Monitoring Program prepared by Raney Planning and Management, Inc. to analyze the environmental effects of the proposed project and, based on the type and intensity of land uses identified with the proposed project and the information contained in IS/MND, the project would not have a significant adverse effect on the environment that would not be mitigated by the proposed mitigation measures; and

WHEREAS, the City Council held a Public Hearing for the project on June 28, 2022, and on said date, the Public Hearing was opened, held and closed; and,

WHEREAS, on June 28, 2022, the City Council independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and considered the information contained therein prior to acting upon or approving the Project. Based on all evidence in the administrative record for the Project, the Council adopted Resolution No. 2022-___ adopting the Initial Study/Mitigated Negative Declaration, which determined the project would not have a significant adverse effect on the environment that would not be mitigated by the proposed mitigation measures which have been summarized in a Mitigation Monitoring and Reporting Program adopted by the City Council and added to the

project as conditions of approval. This Development Agreement vests rights to proceed with the project and requires a comminity benefit payment to the City, thus the Development Agreement does not have the potential to cause any impacts beyond those identified in the Initial Study / Mitigated Negative Declaration prepared for the Project.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN BRUNO, AS FOLLOWS:

SECTION 2. This Ordinance incorporates, and by this reference makes a part hereof, that certain Development Agreement, substantially in the form attached to this Ordinance as Exhibit A, subject to minor conforming or technical revisions approved by the City Manager and City Attorney.

SECTION 3. This Ordinance is adopted under the authority of the Development Agreement Statute and pursuant to the provisions of the Development Agreement Resolution.

SECTION 4. The City Council hereby finds and determines that the Development Agreement is consistent with the General Plan of the City of San Bruno for the same reasons the Project overall is consistent with the General Plan and as set forth in the various related Project approval resolutions and ordinance.

SECTION 5. The City Council hereby finds that the proposed Development Agreement is consistent with the requirements of the Development Agreement Statute and the Development Agreement Resolution.

SECTION 6. The City Council hereby authorizes the City Manager to execute the Development Agreement between the City of San Bruno and New Shidai Development, LLC, substantially in the form attached hereto as Exhibit A, subject to minor conforming or technical revisions approved by the City Manager and City Attorney.

SECTION 7. The City Manager or his or her designee is hereby authorized and directed to perform all acts required to be performed by the City in the administration and implementation of the Development Agreement, including, without limitation, reviewing the Development Agreement on an annual basis, approving assignments and executing other agreements or documents necessary to carry out the purposes of the Development Agreement.

SECTION 8. This Ordinance shall take effect thirty (30) days following its final passage and adoption and shall be posted as required by law.

SECTION 9. Within ten (10) days after the date upon which the City Manager executes the Development Agreement on behalf of the City, the City Clerk shall record the Development Agreement and this Ordinance with the County Recorder of the County of San Mateo.

SECTION 10. If any part of this Ordinance, or the Development Agreement which it approves, is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance or of the Agreement, and this City Council hereby declares that it would have passed the remainder of the Ordinance, or approved the remainder of the Agreement, if such invalid portion thereof had been deleted.

Dated: June 28, 2022

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I, Vicky Hasha, Deputy City Clerk, do hereby certify that the foregoing Ordinance was duly and regularly passed and adopted by the City Council of the City of San Bruno this 28th day of June 2022 by the following vote:

AYES: Councilmembers: _____
NOES: Councilmembers: _____
ABSENT: Councilmembers: _____

ATTEST:

_____
Vicky Hasha, Deputy City Clerk

Exhibit A

City Council Review Copy – Draft Development Agreement

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

City of San Bruno
567 El Camino Real
San Bruno, CA 94066
Attn: City Manager

THIS SPACE FOR RECORDED USE

This Agreement is exempt from the payment of a recording fee pursuant to Government Code § 27383.

DEVELOPMENT AGREEMENT

BY AND BETWEEN CITY OF SAN BRUNO AND

New Shidai Development LLC, A CALIFORNIA LIMITED LIABILITY CORPORATION

GLENVIEW TERRACE PROJECT

Effective Date: _____, 2022

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LIST OF EXHIBITS

DEVELOPMENT AGREEMENT

This Development Agreement (this "**Agreement**") is dated for reference purposes as of _____, 2022, by and between the City of San Bruno, a general law city and Californiamunicipal corporation ("**City**") and New Shidai Development LLC, a California limited liability corporation ("**Developer**"). Developer and City are referred to individually in this Agreement as a "**Party**"and collectively as the "**Parties**."

RECITALS

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 (the "**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 of the City of San Bruno adopted Resolution No. 1986-77 (the "**City Development Agreement Regulations**"), which authorizes the execution of development agreements and specifies additional procedures and requirements supplementing the Development Agreement Statute. The provisions of the Development Agreement Statute and the City Development Agreement Regulations are collectively referred to herein as the "**Development Agreement Law**."

C. Developer is the owner of that certain real property on the corner of San Bruno Avenue and Glenview Drive in **Exhibit A** and depicted in **Exhibit B** (the "**Property**"). The Property measures approximately 3.28 acres in size, consisting of three parcels that will be merged into one parcel.

D. Developer proposes to develop a residential project on the Property consisting of 29 single family homes with attached garages ranging in size from 1,700 to 2,600 square feet in size, with outdoor recreational open space and landscaping common amenities, as described in the Existing Approvals (the "**Project**"). Developer submitted applications for the following City approvals for the Project on December 2, 2017 (together, the "**Applications**"): (1) General Plan Amendment to change a portion of the site from low density residential to medium density residential (the "**General Plan Amendment**"); (2) rezoning the entire site from R-1/P-D to P-D (the "**P-D Rezoning**"); a Planned Development Permit (PDP_____) (the "**PD Permit**"); (3) a vesting tentative tract subdivision map to merge the existing three lots into one and to create 29 new single-family residential lots (TM_____) (the "**Vesting Tentative Map**"); (4) architectural review (AR____) (the "**Architectural Review Permit**"); (5) a Development

Agreement (DA_____); (6) an affordable housing plan pursuant to Municipal Code Section 12.230.070 (the"**Affordable Housing Plan**"); and (7) a request for CEQA clearance for the Project. The Applications were determined or deemed complete pursuant to State law and the San Bruno Municipal Code ("**Complete Application**") as of March 26, 2021 (the "**Complete Application Date**").

E. City prepared a mitigated negative declaration, pursuant to the California Environmental Quality Act (Public Resources Code section 21000 *et seq*.) ("**CEQA**") and the State CEQA Guidelines (California Code of Regulations section 15000 *et seq.*) (the "**CEQA Guidelines**") ("**Mitigated Negative Declaration**").

F. After a duly noticed public hearing, on_____, 2022, the Planning Commission of City recommended that the City Council of City approve the Mitigated Negative Declaration and the Applications.

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

1. Findings to approve, and approval of, the Mitigated Negative Declaration by Resolution No. ___, adopted by the City Council on ___, 2022.

2. Determination that the Existing Approvals may rely on the Mitigated Negative Declaration without additional CEQA review pursuant to Section 15162 of the CEQA Guidelines, by Resolution No._____adopted by the City Council on _____, 2022(the "**Project CEQA Approval**").

3. Approval of General Plan amendment by Resolution No. ___, adopted by the City Council on ___, 2022;

4. Approval of the P-D Rezoning by Ordinance No._____ _____, introducedby the City Council on _____, 2021 and adopted on _____, 2022.

5. Approval of the PD Permit by Resolution No. _____adopted by theCity Council on _____ _____, 2022;

6. Approval of the Vesting Tentative Map by Resolution No. _____adopted by the City Council on _____, 2022; and

7. Approval of the Architectural Review Permit by Resolution No._____ adopted by the City Council on _____, 2022.

8. Approval of the Affordable Housing Plan by Resolution No._____ adopted by the City Council on _____, 2022.

H. It is the intent of City and Developer to establish certain conditions and requirements related to review, approval, development and operation of the Project, which are or will be the subject of this Agreement.

I. City specifically finds, as required by the Development Agreement Law and as reflected in the Enacting Ordinance (as defined in Recital O), that approving this Agreement for the Project will promote orderly growth and quality development in accordance with the goals and policies set forth in the General Plan; is compatible with the uses authorized in, and the regulations prescribed for, the district in which the Property is located; will promote the public convenience, general welfare, and good land use practice; will promote development which is not detrimental to the health, safety and general welfare; will not adversely affect the orderly development of property or the preservation of property value; and will promote and encourage development of the Project by providing a greater degree of requisite certainty. City also finds that the Project will provide substantial public benefits as described in this Agreement.

J. In exchange for the benefits received in this Agreement, Developer wishes to provide the City with a contribution in the amount of $400,000.00. City may, but is not obligated to, use such contribution for construction of a four way traffic signal at the intersection of San Bruno Avenue and Glenview Terrace, acquisition or development of recreational facilities, or other uses as determined by the City in its sole discretion(the "**Public Benefit Payment**").

K. City and Developer have reached mutual agreement and desire to voluntarily enter into this Agreement to facilitate development and operation of the Project subject to the conditions and requirements set forth herein.

L. City has given the required notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to Government Code section 65867 and the City Development Agreement Regulations. City has reviewed and evaluated this Agreement in accordance with the Development Agreement Law and has determined that the provisions of this Agreement and its purposes are consistent with the Development Agreement Law and the goals, policies, standards and land use designations specified in the General Plan.

M. Following a duly noticed public hearing, on _____, 2022 the City Council introduced Ordinance No.___approving this Agreement and authorizing its execution, including approval of Developer providing on-site for-sale affordable units pursuant to Municipal Code Chapter 12.230, and the City Council adopted that Ordinance on_____, 2021 (the "**Enacting Ordinance**").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises

contained herein and other valuable consideration, the Parties hereby agree as follows:

The Parties agree and acknowledge that the above recitals are true and accurate and are incorporated into this Agreement by this reference.

ARTICLE 1. DEFINITIONS

1.1. Definitions.

*"**Administrative Project Amendment**"* is defined in Section 8.2.1.

*"**Affiliated Party**"* is defined in Section 10.1.2.

*"**Affordable Housing Agreement**"* is defined in Section 5.1.2.4.

*"**Affordable Housing Plan**"* is defined in Section 5.1.1 and Exhibit F.

*"**Affordable Housing Program**"* is defined in Section 5.1.

*"**Affordable Units**"* is defined in Section 5.1.1.

*"**Agreement**"* or *"**Development Agreement**"* means this Development Agreement between City and Developer, including all Exhibits hereto.

*"**Agreement Amendment**"* is defined in Section 8.3.2.

*"**Applicable City Regulations**"* means the ordinances, resolutions, orders, rules, officialpolicies, standards, specifications, guidelines or other regulations of City that are applicable to the Property and the Project and in effect on the Effective Date.

*"**Applicable Law**"* means the Applicable City Regulations and all State and Federal lawsand regulations applicable to the Property and the Project as such State and Federal laws and regulations may be enacted, adopted and amended from time to time, as more particularly described in Section 3.8.

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

*"**Architectural Review Permit**"* is defined in Recital D.

*"**Assignee**"* is defined in Section 10.1.1.

*"**Assignment**"* is defined in Section 10.1.3.

*"**Assignment and Assumption Agreement**"* is defined in Section 10.1.3 and Exhibit E.

*"**Business Day**"* means a day that is not a Saturday, Sunday, federal holiday or state holiday under the laws of the State of California.

*"**CEQA**"* means the California Environmental Quality Act, California Public ResourcesCode section 21000, *et seq*., as amended from time to time.

*"**CEQA Guidelines**"* means the State CEQA Guidelines (California Code of Regulations,Title 14, section 15000, *et seq.*), as amended from time to time.

*"**Certificate**"* is defined in Section 6.1.4.

*"**Changes in the Law**"* is defined in Section 3.8.

*"**Chief Building Official**"* means the Chief Building Official of the City of San Bruno orhis or her designee.

*"**City**"* means the City of San Bruno.

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

*"**City Development Agreement Regulations**"* is defined in Recital B.

*"**City Manager**"* means the City Manager of the City of San Bruno or his or her designee.

*"**City Parties**"* means and includes City and its elected and appointed officials, officers,employees, contractors and representatives.

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

*"**Complete Application**"* is defined in Recital D.

*"**Complete Application Date**"* is defined in Recital D.

*"**Connection Fees**"* means those fees charged by City on a citywide basis or by a utilityprovider to utility users as a cost for connecting water, sanitary sewer, and other applicable utilities, except for any such fee or portion thereof that constitutes an Impact Fee.

*"**Consumer Price Index**"* or *"**CPI**"* shall mean the San Francisco-Oakland-San Jose Consumer Price Index, All Items (1982-84=100) for All Urban Consumers (CPI-U), published by the Bureau of Labor Statistics for the U.S. Department of Labor Consumer Price

Index for theSan Francisco Bay Area, or if such index is no longer available by a comparable index as reasonably selected by City.

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

*"**Developer**"* means New Shidai Development LLC, a California limited liability corporation and its permitted successors, assigns and Affiliated Parties (as defined in Section 10.1.2).

*"**Development Agreement**"* or *"**Agreement**"* means this Development Agreement between City and Developer, including all Exhibits hereto.

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

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

*"**Development Project**"* means a development project as defined by section 65928 of theCalifornia Government Code. Notwithstanding section 65928 of the California Government Code, Development Project shall also include all ministerial approvals required to carry out, construct, reconstruct, and occupy such a development project.

*"**Director**"* means the Director of Community and Economic Development of the City ofSan Bruno, or his or her designee.

*"**Effective Date**"* is defined in Section 2.1.

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

*"**Exactions**"* means exactions that may be imposed by the City as a condition of developing the Project, including 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**"* means and includes those permits and approvals for the Projectgranted by City to Developer as of the Effective Date as set forth in Recital G, plus this Agreement.

*"**Existing Impact Fees**"* is defined in Section 4.1.

*"**General Plan**"* means City's General Plan, as amended through the Effective Date.

*"**Horizontal Permit**"* means a City-issued permit for grading, utility installation or similarhorizontal site preparation work, but not a Vertical Permit.

*"**Impact Fees**"* means the monetary amount 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 the Development Project or development of the public facilities related to the Development Project, including, any "fee" as that term is defined by Government Code section 66000(b). For purposes of this Agreement, a fee that meets both the definitions of an Impact Feeand an Exaction will be considered to be an Impact Fee. Impact Fees do not include Other Agency Fees.

*"**Litigation Challenge**"* is defined in Section 9.3.

*"**Major Project Amendment**"* is defined in Section 8.2.2.

*"**Material Condemnation**"* is defined in Section 13.1.

*"**Mortgage**"* means any mortgage, deed of trust, security agreement, and other like security instrument encumbering all or any portion of the Property or any of the Developer's rights under this Agreement.

*"**Mortgagee**"* means the holder of any Mortgage, and any successor, assignee or transferee of any such Mortgage holder.

*"**Municipal Code**"* means and refers to the City of San Bruno's Municipal Code, asamended from time to time.

*"**New City Laws**"* means 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 their power of initiative or otherwise) after the Effective Date.

*"**Notice of Breach**"* is defined in Section 12.1.

*"**Operating Memorandum**"* is defined in Section 8.3.1.

*"**Other Agency Fees**"* is defined in Section 4.3.

*"**Other Agency Subsequent Approvals**"* means approvals, entitlements and permitsrequired for development or use of the Project to be obtained from governmental or quasi- governmental entities other than the City.

*"**Party**" and "**Parties**"* shall mean City and/or Developer.

*"**P-D Rezoning**"* is defined in Recital D.

*"**PD Permit**"* is defined in Recital D.

*"**Permitted Delay**"* is defined in Section 13.4.

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

*"**Prevailing Wage Laws**"* is defined in Section 9.2.

*"**Processing Fees**"* means all fees for processing Development Project applications, including any required supplemental or other further environmental review, plan checking and inspection and monitoring for land use approvals, design review, grading and building permits, 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 are intended to cover theactual costs of processing the foregoing.

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

*"**Project Approvals**"* means the Existing Approvals and all Subsequent Approvals as andwhen approved.

*"**Project CEQA Approval**"* is defined in Recital G.

*"**Project CEQA Documentation**"* is defined in Recital E.

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

*"**Public Benefit Payment**"* is defined in Recital J.

*"**Subsequent Approvals**"* is defined in Section 7.1.

*"**Term**"* is defined in Section 2.2.

*"**Title Encumbrances**"* is defined in Section 5.1.2.5

*"**Transfer**"* is defined in Section 10.1.1.

*"**Vertical Permit**"* means a City-issued building permit or other permit to construct vertical structural improvements on the Property, which by way of illustration but not limitation may include foundation-only permits, building shell and core construction permits, or a combination of the two, but not including Horizontal Permits.

*"**Vested Elements**"* is defined in Section 3.1.

*"**Vesting Tentative Map**"* is defined in Recital D.

ARTICLE 2. EFFECTIVE DATE AND TERM; PUBLIC BENEFIT

2.1. Effective Date. The "**Effective Date**" of this Agreement shall be the later of (a) the date that is thirty (30) days after the date the Enacting Ordinance is adopted, or (b) the date this Agreement is fully executed by the Parties. The Parties acknowledge that Section 65868.5 of the Development Agreement Statute requires this Agreement to be recorded in the Official Records of the San Mateo County Recorder's Office no later than ten (10) days after the City enters into this Agreement, and that the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all permitted successors in interest to the Parties to this Agreement. The City Clerk shall cause such recordation.

2.2. Term of Agreement. The "**Term**" of this Agreement shall be for four (4) years, commencing on the Effective Date.

2.3. Public Benefit Payment.

2.3.1. Public Benefits Obligations. In consideration of the rights and benefits conferred by City to Developer under this Agreement, and as a material inducement to City to enter into this Agreement, Developer has offered and agreed to perform the public benefit obligations and pay to City the amounts set forth in this Article 2 all within the times set forth herein.

2.4. Public Benefit Payment Schedule.

2.4.1. Upon issuance of the first building permit, Developer shall pay Two Hundred Thousand Dollars ($200,000) to the City, followed by the remaining Two Hundred Thousand Dollars ($200,000) upon issuance of the building permit for the tenth home. The Public Benefit Payment will be deposited into the City's General Fund. City may, but is not obligated to, use the Public Benefit Payment for a four-way traffic signal at the intersection of San Bruno Avenue and Glenview Terrace, acquisition or development of recreational facilities, or other uses as determined by the City in its sole discretion. The Public Benefit Payment shall not be used for City maintenance activities, salaries, pensions, or other benefits paid or provided to City employees.

2.4.2. If the Public Benefit Payment is not paid in full as and when required under this Agreement, this Agreement may be terminated by City in its sole discretion by written notice to Developer, subject to the notice and cure provisions set forth in Article 12. In the event Developer elects at any point in time not to proceed with development of the Project, Developer shall have the right to terminate this Agreement by delivering written notice of termination to City, and upon such termination Developer shall have no further obligation to pay the Public Benefit Payment pursuant to the terms of this Agreement.

2.4.3. CPI Adjustment. The Public Benefit Payment is not subject to CPI Adjustment.

2.5. City Representations and Warranties. City represents and warrants to Developer that, as of the Effective Date:

2.5.1. 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.

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

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

During the Term of this Agreement, City shall, upon learning of any fact or condition which would cause of any of the warranties and representations in this Section 2.5 not to be true, immediately give written notice of such fact or condition to Developer.

2.6. Developer Representations and Warranties. Developer represents and warrants to City that, as of the Effective Date:

2.6.1. Developer is duly organized or incorporated and validly existing under the laws of the State of California, and is in good standing 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.

2.6.2. The execution and delivery of this Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary corporate action and all necessary corporate authorizations have been obtained.

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

2.6.4. The execution, delivery, and performance of this Agreement by Developer does not and will not materially conflict with, or constitute a material violation or material breach of, or constitute a default under (a) the corporation formation agreements of Developer; (b) any law, rule, or regulation binding upon or applicable to the Developer; or (c) any material agreements to which Developer is a party.

2.6.5. Developer has not (a) made a general assignment for the benefit of creditors; (b) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Developer's creditors; (c) suffered the appointment of a receiver to take possession of all, or substantially all, of Developer's assets; (d) suffered the attachment or other judicial seizure of all, or substantially all, of Developer's assets; or (e) admitted in writing its inability to pay its debts as they come due.

2.6.6. Unless otherwise disclosed in writing to the City prior to the date of Council adoption of this Agreement and except for threats of litigation expressed in public hearings relating to the Project Approvals, to Developers' actual knowledge, there is no existing litigation, suit, action, or proceeding before any court or administrative agency affecting Developer or the Property that would, if adversely determined, materially and adversely affect Developer's ability to perform its obligations under this Agreement or to develop and operate the Project.

2.6.7. Developer or any person or entity owning or operating the Property has duly obtained and maintained, or will duly obtain and maintain, all licenses, permits, consents, and approvals required by all applicable governmental authorities to develop, sell, lease, own, and operate the Project on the Property.

2.6.8. 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 Section 2.6 not to be true, immediately give written notice of such fact or condition to City.

ARTICLE 3. DEVELOPMENT OF THE PROPERTY

3.1. Vested Rights. The Property is hereby made subject to the provisions of this Agreement. Developer shall have the vested right to develop the Property and the Project in conformance with the Existing Approvals, the Subsequent Approvals, Applicable Law and this Agreement, as may be amended from time to time pursuant to this Agreement, which shall control the permitted uses of the Property, density and intensity of use of the Property and the maximum height and size of buildings on the Property, the provisions for reservation or dedication of land for public purposes, and the design, improvement, and the conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development applicable to the Property as set forth in Applicable Law, the Project Approvals, and this Agreement (collectively, the "**Vested Elements**").

3.2. Life of Approvals. Pursuant to Government Code section 66452.6(a) and this Agreement, the term of any non-legislative Project Approvals, including but not limited to the Vesting Map Approval and any subdivision map approval, shall coincide with and in no event extend beyond the Term of this Agreement notwithstanding any other statute, rule, or authority that purports to set a different term for such Project Approvals, and, unless expressly set forth in this Agreement, any termination under this Agreement shall concurrently effect a termination of the non-legislative Project Approvals with respect to the terminated portion of the Project.

3.3. Permitted Uses. The permitted uses for the Property and the Project are those set forth in the Existing Approvals and as may be set forth in the Subsequent Approvals. Changes tothe Project use are subject to the Project Approval and Agreement amendment processes as set forth in Sections 8.2 and 8.3. In the event of a conflict between the Project Approvals and the terms of this Section 3.3, the Project Approvals shall govern.

3.4. Governing Rules. Except as otherwise explicitly provided in this Agreement, development of the Property shall be subject to (a) the Project Approvals, and (b) the Applicable Law. Notwithstanding the foregoing, the following New City Laws shall apply to the development of the Property as follows:

3.4.1. Except as may be addressed in the Project Approvals and this Agreement, New City Laws that relate to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure imposed at any time, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of Development Projects and properties, and such procedures are not inconsistent with procedures set forth in the Project Approvals or this Agreement;

3.4.2. Other New City Laws that revise City's uniform construction codes, including City's building code, plumbing code, mechanical code, electrical code, fire code, grading code and other uniform construction codes, as of the date of permit issuance, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of Development Projects and properties; and provided further, that during the Term of this Agreement the Property and the Project shall not be subject to any New City Law enacted after the Effective Date that would impose new building standards or requirements for improved energy efficiency and sustainability (commonly known as "green" standards) that are in excess of what is mandatory under applicable California Green Building Standards (CALGreen) or other uniformly applicable green building standards enacted by California or the Federal government (commonly known as Registration, Evaluation, Authorization and Restriction of Chemicals, or "REACH" standards).

3.4.3. Other New City Laws that are determined by City to be reasonably required in order to protect residents of the Project, and/or residents of the City, from a condition dangerous to their health or safety, or both;

3.4.4. Other New City Laws that do not conflict with the Vested Elements, this Agreement or the Project Approvals pursuant to Section 3.7, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of Development Projects and properties; and

3.4.5. Other New City Laws that do not apply to the Property and/or the Project due to the limitations set forth above, but only to the extent that such New City Laws are accepted in writing by Developer in its sole discretion.

3.5. Timing of Development.

3.5.1. *Pardee* and the Intent of the Parties. Developer shall have no obligation to develop or construct the Project or any component of the Project. Without any limitation 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 to avoid that

result. Therefore, notwithstanding the adoption of any initiative after the Effective Date by City's electorate to the contrary, the Parties acknowledge that, except as otherwise provided for in this Agreement, Developer shall have the vested right during the Term to develop the Project at such time as Developer deems appropriate in the exercise of its sole and subjective business judgment, subject to the terms of this Agreement.

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

3.5.3. No Other Requirements. Nothing in this Agreement is intended to create any affirmative development obligations to develop the Project at all, or in any particular order or manner except as such order or manner may be specified in this Agreement if the Project is developed, or liability in Developer under this Agreement if the development fails to occur.

3.6. Compliance with Laws. Developer, at its sole cost and expense, shall comply with the requirements of, and obtain all permits and approvals required by local, State and Federal agencies having jurisdiction over the Property or Project. Furthermore, Developer shall carry out the Project work in conformity with all Applicable Law, including applicable state labor laws and standards; Applicable City Regulations; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. section 12101, *et seq*., Government Code section 4450, *et seq*., Government Code section 11135, *et seq*., and the Unruh Civil Rights Act, Civil Code section 51, *et seq*.

3.7. No Conflicting Enactments. Except as otherwise provided in this Agreement, for the Term of this Agreement City shall not impose on the Project (whether by action of the City Council or by initiative, referendum or other means, including development moratorium or additional Project conditions on Subsequent Approvals) any New City Law that is in conflict with this Agreement or the Existing Approvals or, once approved, the Subsequent Approvals. Without limiting the generality of the foregoing, for the purposes of this Article 3, "conflict" means any New City Law that would (a) apply to the Property any change in land use designation or permitted use, density or intensity of development of the Property; (b) apply to the Property any change in off-site infrastructure or utility requirements or limit or control the availability of or ability to obtain public utilities, services, infrastructure, or facilities for the Project (provided, however, nothing herein shall be deemed to exempt the Project or the Property from any water use rationing requirements that may be imposed from time to time in the future and nothing herein shall be deemed a commitment to reserve potable water or sanitary sewer capacity which the Parties acknowledge City does not control); (c) modify or control building

setbacks, square footages or heights; the location of buildings and structures; parking requirements; or grading in a manner that is inconsistent with or more restrictive than the terms included in the Existing Approvals or this Agreement; or (d) limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project. Developer reserves the right to challenge in court any New City Law that would conflictwith the Vested Elements or this Agreement or reduce the development rights provided by this Agreement.

3.8. Changes in the Law. As provided in Section 65869.5 of the Development Agreement Statute, this Agreement shall not preclude the applicability to the Project of changesin laws, regulations, plans or policies, to the extent that such changes are specifically mandatedand required by changes in State or Federal laws or regulations 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. Nothing in this Agreement shall preclude Developer from contesting by any available means (including administrative or judicial proceedings) the applicability to the Project of any such Changes in the Law. In the event that a Change in the Law operates to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Agreement, Developer may terminate this Agreement; provided, to the extent that such frustration affects only a portion of the Project but other portions are developed, this Agreement shall remain in effect as to such built portion.

3.9. Initiatives and Referenda. If any New City Law is enacted or imposed by initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which New City Law would conflict with the Vested Elements or this Agreement or reduce the development rights provided by this Agreement and the Project Approvals, such New City Law shall not apply to the Project. City, except to submit to vote of the electorate initiatives and referendums required by Applicable Law to be placed on a ballot, shall not adopt or enact any New City Law, or take any other action which would violate the express provisions of this Agreement or the Project Approvals. Developer reserves the right to challenge in court any New City Law that would conflict with this Agreement or the Project Approvals or reduce the vested development rights provided by this Agreement. Notwithstanding the foregoing, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. Developer further acknowledges and agrees 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 limitation that may affect the Project.

3.10. Regulation by Other Public Agencies. Developer acknowledges that other public agencies not within the control of City 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 will, at the time required in accordance with Developer's project and 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 acknowledges that City does not control the amount of any fees imposed by such other agencies. In the event that such fees are imposed upon Developer and are in excess of those allowed by Applicable Law and Developer wishes to object to such fees, Developer may pay such fees under protest. City agreesnot to delay issuance of permits or other Subsequent Approvals and entitlements under these circumstances, provided Developer provides City with proof of payment of such fees.

3.11. 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, through the Term. However, nothing in this Agreement is intended to provide any reservation of potable water or sanitary sewer capacity.

ARTICLE 4. FEES

4.1. Impact Fees.

4.1.1. Except as otherwise expressly provided herein, during the Term City shall have the right to impose and Developer shall be obligated to pay, only such Impact Fees as City has adopted as of the Effective Date and that are set forth in the Existing Approvals and this Agreement ("**Existing Impact Fees**"). For convenience of reference, the Existing Impact Fees are identified in **Exhibit D**. Any Existing Impact Fees that are in existence as of the Effective Date but are inadvertently omitted from **Exhibit D** will still be charged. In the event of such inadvertent omission, the Parties shall revise **Exhibit D** to correct such error.

4.1.2. Payment of the Existing Impact Fees shall be at the rates, times and terms in effect as of the Effective Date, subject to adjustment as specified in **Exhibit D** or Applicable City Regulations, or if no such adjustment is specified in Exhibit D or Applicable City Regulations then annually beginning on the first anniversary of the Effective Date to recognize any increase or decrease in the Consumer Price Index from the previous year between the Effective Date and the date of payment. To the extent that City revises any Existing Impact Fee amount, rate, or formula in a way that would result in Developer paying a lower Existing Impact Fee than specified in **Exhibit D** when payment is due under this Agreement, Developer shall pay the lower Existing Impact Fee.

4.1.3. Developer shall receive the benefit of any fee credits that are in effect as of the Effective Date and the amount of Existing Impact Fees that are payable by Developer hereunder shall be reduced by the amount of such credits. Developer shall receive full credit for all existing uses of the Property.

4.2. Processing Fees. Subject to Developer's right to protest and/or pursue a challenge in law or equity to any new or increased Processing Fee, City may charge and Developer is obligated to pay all Processing Fees for processing applications for Subsequent Approvals, at the rates which are in effect on a City-wide basis at the time those permits, approvals, entitlements, reviews or inspections are applied for, requested or required. Without limiting the above, by entering into this Agreement Developer accepts and shall not protest or challenge imposition of

the types and amounts of Processing Fees in effect as of the Effective Date.

4.3. 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 on behalf of such other agencies ("**Other Agency Fees**").

4.4. Taxes and Assessments. As of the Effective Date, assessments are in effect and applicable to the Property or the Project as shown on the latest property tax bill for the Property. City is not aware of any pending efforts to initiate or consider new or increased assessments that would apply to the Property or the Project. City may impose and Developer agrees to pay any and all existing, new, modified or increased taxes and assessments, other than Impact Fees, imposed on the Property or the Project in accordance with the laws in effect as of the date due, at the rate in effect at the time of payment. Nothing herein shall be construed so as to limit Developer from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property. In the event an assessment district is lawfully formed to provide funding for services, improvements, maintenance, or facilities which are substantially the same as those services, improvements, maintenance or facilities being funded by the fees or assessments to be paid by Developer under the Project Approvals or this Agreement, then at City's election, taking into consideration City's expectations as to when it would receive Developer's payment of such fees or assessments, either (a) the fees or assessments to be paid by Developer shall be subject to reduction/credit in an amount equal to Developer's new or increased assessment under the assessment district, or (b) the new assessment district shall reduce/credit Developer's new assessment in an amount equal to such fees or assessments to be paid by Developer under the Project Approvals or this Agreement.

4.5. Connection Fees. Subject to Developer's right to protest and/or pursue a challenge in law or equity to any new or increased Connection Fee, City may charge and Developer shall pay any Connection Fee that is lawfully adopted.

ARTICLE 5. AFFORDABLE HOUSING

5.1. Affordable Housing. The Project is a "for sale project" for purposes of the Affordable Housing Program because the residential units may be sold individually in conformance with the Subdivision Map Act. Developer acknowledges that Chapter 12.230 of the Municipal Code (the "**Affordable Housing Program**") requires for sale residential projects to provide on-site for sale affordable housing units, unless the developer proposes and the City Council approves an alternative. Developer has proposed to provide on-site for sale affordable units.

5.1.1. Developer shall make fifteen percent (15%) of the residential units in the Project available for sale at below-market rates to qualifying purchasers, as further specified below (the "**Affordable Units**"). The Affordable Units and their availability shall be governed by the terms and conditions described in **Exhibit F** (the "**Affordable Housing Plan**"). The Parties agree that the terms and conditions specified in **Exhibit F** satisfy the requirements for an

affordable housing plan pursuant to Municipal Code Section 12.230.070.

5.1.2. The Affordable Housing Plan may be refined, modified, or amended pursuant to the process for Administrative Project Amendments and Major Project Amendments, as applicable, set forth in Section 8.2. Notwithstanding the foregoing or any provision of this Agreement to the contrary, during the Term, provisions of the Affordable Housing Plan set forth in **Exhibit F** may only be refined, modified, or amended pursuant to the process for Operating Memorandum and Agreement Amendments, as applicable, set forth in Section 8.3:

5.1.2.1. Developer is obligated to construct 4.35 Affordable Units. Developer shall construct four (4) for-sale Affordable Units in the Project. One of the Affordable Units shall be sold at prices affordable for low income households (as defined in San Bruno Municipal Code section 12.230.020.R), and three of the Affordable Units shall be sold at prices affordable for moderate income households (as defined in San Bruno Municipal Code section 12.230.020.U);

5.1.2.2. With respect to the for-sale Affordable Units, the affordability restrictions set forth in the Affordable Housing Plan shall have a term of 45 years commencing upon the datethat a certificate of occupancy is issued for the Affordable Units and upon the date of each resale;

5.1.2.3. In accordance with Municipal Code Section 12.230.040, Developer shall pay an impact fee equal to the decimal fraction zero point three five (0.35) multiplied by the applicable residential impact fee.

5.1.2.4. As a condition to issuance of the Building Permit, or recordation of a final or parcel map, a regulatory agreement shall be prepared in the reasonable good faith discretion of City to implement and enforce the terms of the Affordable Housing Plan ("**Affordable Housing Agreement**") and recorded against the Property. The Affordable Housing Agreement will be released from the Property once all the Affordable Housing Units have been sold. Upon the sale of an Affordable Housing Unit, a deed restriction, in a form of a resale restriction agreement acceptable to the City, will be placed on the Affordable Housing Unit, ensuring the continued affordability of the unit.

5.1.2.5. Title Encumbrance Subordination. By recording this Agreement and the Affordable Housing Agreement against title to the Property, the terms of Section 5.1.1 and the affordability restrictions set forth in the Affordable Housing Plan (the "**Affordability Restrictions**") shall have priority over and shall not be subordinated to any lease, mortgage, deed of trust, security agreement or other lien that may be placed on title to the Property (collectively, "**Title Encumbrances**") and no such Title Encumbrance shall have priority over the Affordability Restrictions or any right to terminate, circumvent or otherwise obstruct or interfere with implementation of the Affordability Restrictions. With respect to any Title Encumbrances recorded prior to the recordation of this Agreement, any mortgagee or other holder of the Title Encumbrance shall execute and record a subordination agreement, in a form reasonably acceptable to the City, providing that such Title Encumbrance shall be subordinate to the Affordability Restrictions ("**Title Encumbrance Subordination**")..

5.1.2.6. Developer shall undertake all actions necessary to implement and enforce this provision and maintain priority of the Affordability Restrictions. Before issuance of any Horizontal Permit or Vertical Permit, if requestedby City Developer shall provide an updated title report and recorded documents as necessary to confirm that any Title Encumbrances include a recorded Title Encumbrance Subordination.

5.1.2.7. Costa-Hawkins Act Waiver. In the event that any future amendment to the Costa-Hawkins Act (Civil Code section 1954.50 *et seq.*) or other future State law prohibits City from requiring on-site inclusionary housing, Developer, on behalf of itself and all of its successors and assigns, agrees not to challenge, and expressly waives, now and forever, any and all rights to challenge under the Costa-Hawkins Act or such other future State law, as the same may be amended or supplanted from time to time, Developer's obligations set forth in this Agreement and the Affordable Housing Agreement(s) related to the Affordable Units.

5.1.2.8. Developer's obligations under this Section 5.1.2 shall surviveexpiration or earlier termination of this Agreement.

5.1.3. Site Fencing; Site Maintenance.

5.1.3.1. Developer may install six- (6) foot tall chain link fencing with green vinyl coated slats around the perimeter of portions of the Property for up to two (2) years after buildings are vacated or demolition and site preparation begins (subject to an extension of up to twelve (12) months at the discretion of the Director as to any portion of the Property for which a Complete Application has been submitted for a Vertical Permit). After such time period (as it may be extended), Developer shall remove the chain link fencing and install fencing in accordance with the approved plans. All fences shall have at least one (1) locking gate to allow for maintenance and emergency access.

5.1.3.2. After demolition of buildings and other improvements, the Property will be graded to leave a smooth and uniform appearance, without any rubble or materials from prior demolition visible from outside the Property. If necessary for storm water runoff or erosion control, City may require that the entire site be planted and maintained with a drought-tolerant ground cover that will fully cover all exposed soil within six months of planting, or covered to a minimum depth of two (2) inches with crushed rock. Vacant lots must be maintained free of litter, weeds, graffiti, debris, storage units, and the stockpiling of any material at all times. Developer or its designee must inspect the Property at reasonable intervals and take other steps to reasonably ensure that no litter, weeds, graffiti, debris, storage units, or materials are stockpiled, collect, or are maintained. Any dead or dying vegetation, as well as any broken or malfunctioning irrigation components must be replaced within seven (7) days of discovery or notification by City.

5.2. Sales Tax Point of Sale Designation.

5.2.1. Developer shall use good faith, diligent efforts to the extent allowed by law to require all persons and entities providing materials to be used in connection with the

construction and development of, or incorporated into, the Project, including by way of illustration but not limitation bulk lumber, concrete, structural steel, roof trusses and other pre-fabricated building components, to (a) obtain a use tax direct payment permit; (b) elect to obtaina subcontractor permit for the job site of a contract valued at Five Million Dollars ($5,000,000) or more; or (c) otherwise designate the Property as the place of use of material used in the construction of the Project in order to have the local portion of the sales and use tax distributed directly to City instead of through the county-wide pool. Developer shall instruct its general contractor(s) for the Project to, and shall cause such general contractor(s) to instruct its/their subcontractors to, cooperate with City to ensure the local sales/use tax derived from construction of the Project is allocated to City to the fullest extent possible. This Section 5.2 shall not apply to tenants who perform their own tenant improvement work.

5.2.2. To assist City in its efforts to ensure that such local sales/use tax is so allocated to City, Developer shall on an annual basis, or as frequently as quarterly upon City's request, provide City with such information as shall be reasonably requested by City regarding subcontractors working on the Project with contracts in excess of the amount set forth above, including a description of all applicable work and materials and the dollar value of such subcontracts, and, if applicable, evidence of their designation, such as approvals or applications for the direct payment permit, of City as the place of use of such work and materials. City may use such information to contact each subcontractor who may qualify for local allocation of use taxes to City. Notwithstanding the foregoing, the failure of any general contractor(s) or subcontractor(s) to allocate sales and use tax revenues as provided herein or to comply with this Section 5.2 shall not constitute a breach by Developer under this Agreement.

5.2.3. Notwithstanding the foregoing, in the event that compliance with this Section 5.2 would have a material adverse effect on development or construction of the Project, Developer shall not be obligated to comply with the terms of this Section 5.2 and the obligations set forth in this Section 5.2 shall be waived. As used in this Section 5.2, "material adverse effect" means an increase in the Project costs of Fifty Thousand Dollars ($50,000) or more or a delay in the construction schedule of ten (10) days or more.

ARTICLE 6. ANNUAL REVIEW

6.1. Annual Review.

6.1.1. Purpose. As required by California Government Code section 65865.1and Sections 15-17 of the City Development Agreement Regulations, City shall review this Agreement and all actions taken pursuant to the terms of this Agreement 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 compliance by Developer with its obligations under this Agreement.

6.1.2. Conduct of Annual Review. The annual review shall be conducted pursuant to the requirements and procedures specified in the City Development Agreement Regulations as they may be amended from time to time. It shall be Developer's responsibility to provide all materials and information necessary to demonstrate good faith compliance with the

terms and conditions of this Agreement. In the event City determines that Developer is not in good faith compliance with the terms and conditions of this Agreement, City may give the Developer a written Notice of Breach, in which case the provisions of Section 12.1shall apply.

6.1.3. Failure to Conduct Annual Review. 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. Failure of City to conduct an annual review pursuant to the terms of this Article 6 shall not constitute or be asserted as a default by Developer.

6.1.4. Certificate of Compliance. If, at the conclusion of the annual review described in Section 6.1.2, Developer is found to be in good faith compliance with the material terms and conditions of this Agreement, City shall, upon request by Developer, issue a Certificate of Compliance ("**Certificate**") to Developer stating that after the most recent annual review and based upon the information actually known to an appropriate official of City specified in such Certificate that: (a) this Agreement remains in effect (for the remainder of the Term); (b) Developer has demonstrated good faith compliance with the terms and conditions of this Agreement for the applicable annual review period; and (c) Developer is not in Default of this Agreement, and to City's knowledge no events exist that with the passage of time or giving of notice or both would be a Default under this Agreement. The Certificate shall be in a recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, and shall state the anticipated date of commencement of the next annual review. Developer may record the Certificate at its sole cost and expense without cost or expense to City.

ARTICLE 7. COOPERATION AND IMPLEMENTATION

7.1. Subsequent 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 Approvals**"). The Subsequent Approvals may include, without limitation, the following: Amendments of the Existing Approvals, use permits, demolition and grading permits, excavation permits, building permits, design review permits, sign permits, sewer and water connection permits, encroachment permits, certificates of occupancy, lot line adjustments or lot merger, site plans, development plans, landscaping plans,improvement plans, land use plans, building plans and specifications, signage plans, and any amendments to, or repealing of, any of the foregoing. Except as otherwise expressly provided herein, the City shall not impose requirements or conditions upon the development and construction of the Project that are inconsistent with the Existing Approvals, including the terms and conditions of this Agreement, and any Subsequent Approvals as may be obtained from time to time.

7.2. Scope of Review of Subsequent Approvals. City, in approving the Existing Approvals and vesting the Project through this Agreement, is limiting its future discretion with respect to the Project and Subsequent Approvals to determining whether the application for a Subsequent Approval is consistent with and meets the criteria set forth in the Applicable City Regulations, Existing Approvals, and where applicable, other Project Approvals previously

granted. Subject to the foregoing, City reserves discretion to impose appropriate Exactions in connection with issuance of a Subsequent Approval, as necessary to bring the Subsequent Approval into compliance with Applicable Law and Existing Approvals. At such time as any Subsequent Approval applicable to the Property is approved by City, then such Subsequent Approval shall become subject to all the terms and conditions of this Agreement applicable to Project Approvals and shall be automatically vested and treated as a "Project Approval" under this Agreement without the need to amend this Agreement.

7.3. Processing Applications for Subsequent Approvals.

7.3.1. Timely Submittals by Developer. Developer acknowledges that City cannot begin processing applications for Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use diligent good faith efforts to (a) 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 (b) cause Developer'splanners, 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 Approvals.

7.3.2. Timely Processing by City. Upon submission by Developer of all applicable applications, Processing Fees and any and all other fees and deposits for any pending Subsequent 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 Approval applications including: (a) 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 Approval application; (b) if legally required, providing notice and holding public hearings; and (c) acting on any such pending Subsequent Approval application. To the greatest extent permitted by the Existing Approvals or Applicable Law, Subsequent Approvals will be processed administratively by City staff. Developer's obligation to pay for the processing of Subsequent Approvals, including staff time, materials and third-party consultants, shall be based on the City's actual out-of-pocket costs.

7.3.3. CEQA. In connection with its consideration and approval of Existing Approvals, the City prepared the Checklist that evaluated the environmental effects of the Existing Approvals for the Project, and has applied to the Project mitigation measures adopted as part of the Mitigated Negative Declaration to reduce the environmental effects therefrom. The Parties acknowledge that certain Subsequent 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 Approvals, City will rely on the Project CEQA Documentation to the fullest extent permissible by CEQA as determined by City in the exercise of its independent judgment. In the event additional environmental review is required for a Subsequent Approval, City shall limit such additional review to the scope of analysis mandated by CEQA and the subject matter of the Subsequent Approval, and shall diligently conduct such

additional review, all as determined by City as the lead agency under CEQA in the exercise of its independent judgment.

7.4. Other Agency Subsequent Approvals. City shall cooperate with Developer at no cost to City, to the extent appropriate and as permitted by Applicable Law, in Developer's efforts to obtain, as may be required, Other Agency Subsequent Approvals. Developer covenants not to submit applications for Other Agency Subsequent Approvals or material supporting such applications that are inconsistent, as reasonably determined by City, with this Agreement or the Project Approvals, except to the extent that Developer is also therewith requesting modifications to this Agreement or the Project Approvals that would make this Agreement or the Project Approvals consistent with the applications for the Other Agency Subsequent Approvals.

ARTICLE 8. AMENDMENT OF AGREEMENT AND PROJECT APPROVALS

8.1. Amendment by Written Consent. Except as otherwise expressly provided herein (including Section 6.1 relating to City's annual review and Section 12.3 relating to termination in the event of a breach), this Agreement may be terminated, modified or amended only by mutual written consent of the Parties hereto or their successors in interest or assignees and in accordance with the provisions of Government Code sections 65967, 65867.5 and 65868.

8.2. Project Approval Amendments. To the extent permitted by Applicable Law, Project Approvals may, from time to time, be amended in the following manner:

8.2.1. Administrative Project Amendments. Upon Developer's written request for an amendment or modification to the Existing Approvals or Subsequent Approvals, the Director shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement and Applicable Law. If the Director finds, in his or her sole discretion, that the proposed amendment or modification is minor, consistent with this Agreement and Applicable Law, and will result in no new significant impacts not addressed and mitigated in the Project CEQA Documentation, the amendment or modification shall be determined to be an "**Administrative Project Amendment**" and shall not require an amendment to this Agreement. Upon the Director's approval, any Administrative Project Amendment shall be automatically incorporated into the applicable Project Approvals and this Agreement and shall be automatically vested pursuant to this Agreement without requiring an amendment to this Agreement. Without limiting the foregoing, and by way of example, after City approval of the Existing Approvals, Developer requests for lot line adjustments, minor changes in improvement plans, minor changes in land uses involving minimal acreage, minor alterations in vehicle circulation patterns or vehicle access points, changes in pathway alignments, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, and variations in the location of structures that do not substantially alter the infrastructure connections or facilities and that do not substantially alter the design concepts of the Project may be treated as AdministrativeProject Amendments.

8.2.2. Major Project Amendments. Any amendment to the Project Approvals

which is determined not to be an Administrative Project Amendment as set forth in Section 8.2.1 shall be deemed a "**Major Project Amendment**." A Major Project Amendment shall be processed in the same manner and require the same approvals as the original Project Approval, including, where so required, giving of notice and a public hearing before the Planning Commission and City Council in accordance with Applicable Law. The Director shall have the authority to determine if an amendment is a Major Project Amendment subject to this Section 8.2.2 or an Administrative Project Amendment subject to Section 8.2.1.

8.3. Amendment of this Agreement. This Agreement may be amended, refined or clarified from time to time, in whole or in part, by mutual written consent of the Parties or their successors in interest, as follows:

8.3.1. Refinement by Operating Memoranda.

8.3.1.1. The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation between City and Developer, and during the course of implementing this Agreement and developing the Project refinements and clarifications of this Agreement become appropriate and desired 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 a refinement is necessary or appropriate, City and Developer shall effectuate such refinement through a memorandum (the "**Operating Memorandum**") approved in writing by City and Developer, which, after execution, shall be attached hereto as an addendum and become a part hereof. Any Operating Memorandum may be further refined from time to time as necessary with future approval by City and Developer. No Operating Memorandum 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 refinement may be effectuated pursuant to this Section 8.3.1 or whether the requested refinement is of such a character to constitute an amendment hereof pursuant to Section 8.3.2 below. The City Manager shall be authorized toexecute any Operating Memoranda hereunder on behalf of City.

8.3.1.2. By way of illustration but not limitation of the above criteria foran Operating Memorandum, any refinement of this Agreement which does not substantially affect (a) the Term; (b) permitted uses of the Property; (c) provisions for the reservation or dedication of land; (d) conditions, terms, restrictions or requirements for Subsequent Approvals; (e) increases in the density or intensity of the use of the Property or the maximum height or sizeof proposed buildings; (f) monetary contributions by Developer; or (g) the provision of public benefits described in Article 5, shall be deemed suitable for an Operating Memorandum and theCity Manager, except to the extent otherwise required by Applicable Law, may approve the Operating Memorandum without notice and public hearing.

8.3.2. Agreement Amendments. Any revision to this Agreement which is determined not to qualify for an Operating Memorandum as set forth in Section 8.3.1 shall be deemed an "**Agreement Amendment**" and shall require giving of notice and a public hearing before the Planning Commission and City Council in accordance with Applicable Law. The City Manager, in consultation with the City Attorney, shall determine if an amendment is an

Agreement Amendment subject to this Section 8.3.2 or qualifies for an Operating Memorandum subject to Section 8.3.1.

8.3.3. Requirement for Writing. No modification, amendment or other change tothis 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 in interest. Each Operating Memorandum and Agreement Amendment shall upon approval and execution become part of this Agreement. A copy of any change shall be provided to the City Council within thirty (30) days of its execution.

8.4. 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 date of execution of this Agreement.

8.4.1. No amendment or addition to the Development Agreement Statute or any other federal or state law or regulation that would materially adversely affect the interpretation or enforceability of this Agreement or would prevent or preclude compliance with one or more provisions of this Agreement shall be applicable to this Agreement, unless such amendment or addition is specifically required by a Change in the Law or is mandated by a court of competent jurisdiction.

8.4.2. 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.

8.4.3. In the event that the application of such new law or regulation to this Agreement is mandatory (as opposed to permissive), the Parties shall meet in good faith to determine the feasibility of any modification or suspension of this Agreement 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 and the Vested Elements. Following such meeting between the Parties, the provisions of this Agreementmay, 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. Developer and/or City shall have the right to challenge any new law or regulation, or its application to this Agreement, that would prevent compliance with the terms of this Agreement, and in the event such challenge is successful this Agreement shall remain unmodified and in fullforce and effect except as the Parties may mutually agree.

8.4.4. During the time such new law or regulation or its application to this Agreement is challenged in good faith by a Party, the Term of this Agreement may be extended for up to four (4) years, after which if the Parties cannot mutually agree to a modification or suspension as described above either Party may terminate this Agreement.

ARTICLE 9. INSURANCE, INDEMNITY AND COOPERATION IN THE EVENT OFLEGAL CHALLENGE

9.1. Insurance Requirements. Prior to commencement of construction activities (including demolition) and through completion of all construction activities for the Project, Developer shall procure and maintain, or cause its contractor(s) to procure and maintain, a commercial general liability policy in an amount not less than Five Million Dollars ($5,000,000) combined single limit, including contractual liability together with a comprehensive automobile liability policy in the amount of Two Million Dollars ($2,000,000), combined single limit. Such policy or policies shall be written on an occurrence form. Developer's insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-:VII or a rating otherwise approved by the City in its sole discretion. Developer shall furnish at City's request appropriate certificate(s) of insurance evidencing the insurance coverage required hereunder, and City Parties shall be named as additional insured parties in such policies. The certificate of insurance shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination (ten (10) days advance notice in the case of cancellation for nonpayment of premiums) where the insurance carrier provides such notice to the Developer. Coverage provided hereunder by Developer shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City.

9.2. Indemnity and Hold Harmless. Developer shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City Parties from and against any and all Claims, including Claims for any bodily injury, death, or property damage, resulting directly or indirectly from the development or construction of the Project and, if applicable from compliance with the terms of this Agreement, and/or from any other acts or omissions of Developer under this Agreement, whether such acts or omissions are by Developer or any of Developer's contractors, subcontractors, agents or employees; provided that Developer's obligation to indemnify and hold harmless (but not Developer's duty to defend) shall be limited (and shall not apply) to the extent such Claims are found to arise from the gross negligence or willful misconduct of a City Party. This Section 9.2 includes any and all present and future Claims arising out of or in any way connected with Developer's or its contractors' obligations of the Department of Industrial Relations pertaining to "public works" (collectively, "**Prevailing Wage Laws**"), including all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code section 1726 and 1781. Developer's obligations under this Section 9.2 shall survive expiration or earlier termination of this Agreement.

9.3. Defense and Cooperation in the Event of a Litigation Challenge. 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 City's consideration and/or approval of this Agreement or the Project Approvals, or 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. To the extent Developer desires to contest or defend such Litigation Challenge, (a) Developer shall take the lead role defending such Litigation Challenge and may, in its sole discretion, elect to be represented by the

legal counsel of its choice, with the costs of such representation, including Developer's administrative, legal and court costs, paid solely by Developer; (b) City may, in its sole discretion, elect to be separately represented by the legal counsel of its choice in any such action or proceeding with the costs of such representation including City's administrative, legal, and court costs and City Attorney oversight expenses, paid by Developer; (c) the Parties shall affirmatively cooperate in defending the Litigation Challenge and execute a joint defense and confidentiality agreement in order to share and protect information, under the joint defense privilege recognized under applicable law; and (d) 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 shall be subject to City's and Developer's 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 and Developer in accordance with Applicable Law, and City reserves its full legislative discretion with respect to any such City approval. If Developer opts not to contest or defend such Litigation Challenge, City shall have no obligation to do so. Developer shall reimburse City for its costs incurred in connection with the Litigation Challenge within thirty (30) days following City's written demand therefor, which may be made from time to time during the course of such litigation. Developer's obligations under this Section 9.3 shall survive expiration or earlier termination of this Agreement.

9.4. Public Records Act Requests. Developer shall reimburse City for all duplication costs and fees, but not staff time or costs, associated with City's response to Public Records Act requests related to this Agreement,the Project Approvals, the Property and the Project.

ARTICLE 10. ASSIGNMENT, TRANSFER AND NOTICE

10.1. Assignment. Material consideration and incentive for City agreeing to enter into this Agreement and agreeing to grant the Existing Approvals are those public benefits described in Section 2.3 in Article 5 and the Property being developed as residential property with affordable units. For that reason, certain restrictions on the right of Developer to assign or transfer its interest under this Agreement with respect to the Property during the Term 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 Section 10.1 as reasonable and as a material inducement for City to enter into this Agreement.

10.1.1. Assignment Criteria. Except as otherwise provided in Section 10.1.2 and Section 10.3, during the Term, Developer shall have the right to assign or transfer ("**Transfer**") in whole or in part, its rights, duties and obligations under this Agreement to any person, partnership, joint venture, firm, company, corporation or other entity (any of the foregoing, an "**Assignee**") subject to the written consent of City, which shall not be unreasonably withheld, delayed or conditioned to the reasonable satisfaction of the City Manager, if Developer or the Assignee satisfies the following conditions:

10.1.1.1. Such Transfer shall only occur together with a transfer of the Property, or portion thereof, and in the event of a Transfer involving only a portion of the Property Developer shall retain all rights, duties and obligations under this Agreement as to the retained portion of the Property;

10.1.1.2. The proposed Assignee provides acceptable and verifiable documentation that it has at least five (5) years' experience developing residential housing with affordable housing similar to the Affordable Units as part of a development of similar size to the Project, without any record of material violations of Applicable Laws, or documents a binding arrangement with a qualified third party to manage such operations;

10.1.1.3. The proposed Assignee provides acceptable and verifiable documentation that it has sufficient financial resources to undertake development and/or operation of the Project, and otherwise perform the payment and other obligations of Developer under this Agreement; and

10.1.1.4. Developer is not in Default under this Agreement, or the Assignee agrees to cure any Default promptly after the assignment;

10.1.2. Affiliate Assignment. Notwithstanding the foregoing, Developer may assign its rights under this Agreement without the consent of City (but after providing City the notice and Assignee's assumption agreement pursuant to Section 10.1.3) to any corporation, limited liability company, partnership or other entity which is controlling of, controlled by, or under common control with Developer, and "control," for purposes of this definition, means effective management and control of the other entity, subject only to major events requiring the consent or approval of the other owners of such entity ("**Affiliated Party**").

10.1.3. Notice. At least thirty (30) days prior to Developer's desired assignment date, Developer shall provide City with written notice of any proposed transfer or assignment of Developer's rights or obligations hereunder (each, an "**Assignment**") together with such information needed to document satisfaction of the conditions in Section 10.1 required for an Assignment, and request City's consent to such Assignment as provided herein. Each such notice shall be accompanied by evidence of Assignee's assumption of Developer's obligations hereunder in the form of **Exhibit E** (the "**Assignment and Assumption Agreement**"), which shall be recorded in the Official Records of San Mateo County (assuming City approves the Assignment if required by Section 10.1) concurrent with transfer to the Assignee. City shall provide its written consent or other response within thirty (30) days of City's receipt of the notice and required documentation.

10.1.4. Payment of Costs. Developer shall pay the actual costs borne by City in connection with its review of the proposed Assignment, including costs of attorney review.

10.2. Release of Transferring Developer. Except with respect to a permitted transfer and assignment to an Affiliated Party, notwithstanding any sale, transfer or assignment of the Property, in whole or in part, Developer shall continue to be obligated under this Agreement as

to all of the Property so transferred unless and until (a) City has consented to the assignment as provided above and receives and records Assignee's Assignment and Assumption Agreement, or (b) with respect to Transfers entered into after the issuance of a certificate of occupancy pursuant to Section 10.4, City receives a fully executed and recordable Assignment and Assumption Agreement from Developer.

10.3. Assignment to Financial Institutions or Mortgagee.

10.3.1. Notwithstanding any other provision of this Agreement, Developer may assign all or any part of its rights and duties under this Agreement to any financial institution or Mortgagee from which Developer has borrowed funds for use in acquiring the Property and constructing and/or operating the Project and neither such assignment nor the financing shall require consent from City; provided, City shall be given notice of such intended assignment at least ten (10) Business Days beforehand, and before such assignment may take effect such financial institution or Mortgagee shall either give City confirmation acknowledging and agreeing that its interest in the Property (or enter into a commercially reasonable subordination agreement agreeing that its interest in the Property) (a) is subject and subordinate to this Agreement and to the Affordable Housing Agreement(s) (whether already recorded or to be recorded), and (b) specifically is subject to Section 10.3.2. Developer shall provide a copy of the deed of trust to City within ten (10) Business Days following execution thereof. A conditional assignment or other transfer by a financial institution or Mortgagee back to Developer as part of any financing transaction shall not require City's consent.

10.3.2. Assignment of this Agreement in connection with foreclosure of the Property or a deed in lieu of foreclosure shall not require the consent of City, provided that any person acquiring title or taking possession of the Property from a financial institution or Mortgagee following a foreclosure or deed in lieu of foreclosure must satisfy the criteria for an Assignee in Section 10.1.1, with documentation of such satisfaction provided to City before transfer of title or possession, to the extent there also is a proposed Assignment of an interest in this Agreement.

10.4. Consent Not Required After Issuance of Certificate of Occupancy. Upon the issuance of a certificate of occupancy for the residential units and provided that (a) the Affordable Housing Agreement has been recorded against title to the Project, and (b) all fees required to be paid at the time of Transfer pursuant to the terms of this Agreement have been paid, the restrictions on Transfers set forth in this Article 10 shall no longer apply to any Transfer in whole or in part of Developer's rights, duties and obligations under this Agreement to any Assignee made in connection with the transfer, and City's consent shall not be required for any such Transfers of this Agreement to any Assignee; provided, Developer still must provide City notice and an executed and recordable Assignment and Assumption Agreement pursuant to Section 10.1.3, except an Assignment and Assumption Agreement shall not be required for sales of homes to individual home buyers.

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.

ARTICLE 11. MORTGAGEE PROTECTION

11.1. 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, subject to Section 10.3.2 regarding subsequent Assignments, and subject to this Agreement and the affordability restrictions set forth in Affordable Housing Agreement(s) (whether already recorded or to be recorded) being superior and senior to any lien placed upon the Property or any portion thereof pursuant to Section 5.1.2.5. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish orimpair the lien of any Mortgage made in good faith and for value. Nothing in this Agreement shall prevent or limit Developer, at its sole discretion, from granting one or more Mortgages encumbering all or a portion of Developer's interest in the Property or portion thereof or improvement thereon as security for one or more loans or other financing, 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 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. Developer shall provide the City with a copy of the deed of trust or mortgage within ten (10) days after its recording in the official records of San Mateo County so as to demonstrate its subordination to this Agreement; provided, however, that Developer's failure to provide such document shall notaffect any Mortgage, including without limitation, the validity, priority or enforceability of suchMortgage.

11.2. 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 or duty under this Agreement to perform Developer's obligations or other affirmative covenants of Developer hereunder, or to constructor complete construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with this Agreement and the Project Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided foror authorized by this Agreement, or otherwise under the Project Approvals.

11.3. 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 or determination of noncompliance with this Agreement given to Developer. Each Mortgagee shallhave the right (but not the obligation) during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of Default claimed or the areas of noncompliance set forth by City. If a Mortgagee is required to obtain possession of the property or portion thereof in order to cure any Default, the time to cure shall be tolled so long as the Mortgagee is attempting in good faith and diligently to obtain possession, including by appointment of a receiver or foreclosure, but in no event may this period exceed one hundred twenty (120) days from the date City delivers the Notice of Default to Developer unless the City

Manager in his/her sole discretion approves further time.

11.4. No Supersedure. Nothing in this Article 11 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 11 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 11.3.

11.5. Mortgagee Requested Amendments. The Parties agree that they will make reasonable amendments to this Agreement, at the expense of Developer, to meet the requirements of any lender or Mortgagee for the Project. For the purposes of this Section 11.5, a reasonable amendment is one that does not relieve Developer of any of its material obligations under this Agreement or impair the ability of the City to enforce the terms of this Agreement. City further agrees that if requested to make a reasonable amendment to the Mortgagee protection provisions of this Agreement required to conform to current industry practice, as determined by City, City will consider if such qualifies for an Operating Memorandum.

ARTICLE 12. DEFAULT; REMEDIES; TERMINATION

12.1. Breach and Default. Subject to a Permitted Delay in Section 13.4, except as otherwise provided by this Agreement, breach of, failure, or delay by either Party to perform any term or condition of this Agreement shall constitute a "**Default**." In the event of any alleged Default of any term, condition, or obligation of this Agreement, the Party alleging such Default shall give the defaulting Party notice in writing specifying the nature of the alleged Default and the manner in which the Default may be satisfactorily cured ("**Notice of Breach**"). The defaulting Party shall cure the Default within thirty (30) days following receipt of the Notice of Breach, provided, however, if the nature of the alleged Default is non-monetary and such that it cannot reasonably be cured within such thirty (30) day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter at the earliest practicable date, shall be deemed to be a cure, provided that if the cure is not so diligently prosecuted to completion, then no additional cure period shall be required to be provided. If the alleged failure is cured within the time provided above, then no Default shall exist and the noticing Party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a Default shall exist under this Agreement andthe non-defaulting Party may exercise any of the remedies available under this Agreement.

12.2. Actions During Cure Period. City will continue to process in good faith development applications during any cure period following a Notice of Breach; provided, City need not approve any such application or issue any permit for the Project if the City Manager determines that it relates to an alleged Default by Developer regarding failure to timely make any payment owed by Developer under this Agreement. If there is a dispute regarding the existence of a Default, the Parties shall otherwise continue to perform their obligations hereunder, to the maximum extent practicable in light of the disputed matter and pending its resolution or termination of this Agreement as provided herein. This provision is in addition to and shall not limit any actions that City may take to enforce the conditions of the Project Approvals.

12.3. Termination. In the event of a Default by a Party, the non-defaulting Party shall have the right to terminate this Agreement upon giving notice of intent to terminate pursuant to Government Code section 65868 and City regulations implementing such section. 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 and City regulations implementing said section. 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 12.3.

12.4. Legal Actions.

12.4.1. Institution of Legal or Equitable Actions. In addition to any other rights orremedies, a Party may institute legal or equitable action for mandamus, specific performance or other injunctive or declaratory relief 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 purpose and terms of this Agreement.

12.4.2. 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 General Counsel, Developer's registered agent for service of process, or in such other manner as may be provided by law.

12.5. 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.

12.6. No Damages. In no event shall a Party, or its boards, commissions, officers, agents, employees, shareholders, members or partners 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 fees 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 solely on the remedies provided for herein with respect to any breach of this Agreement by the other Party.

12.7. 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 another 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. In the event the Parties are unable to resolve the issue and reach an agreement within thirty (30) days, either Party may initiate judicial proceedings. Nothing in this Section 12.7 shall in any way be interpreted as requiring that Developer or 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. Nothing in this Section 12.7 shall require a Party to postpone instituting any injunctive proceeding or to pursue resolution under this Section 12.7 if it believes in good faith that such postponement will cause irreparable harm to such Party.

12.8. Surviving Provisions. In the event this Agreement is terminated, neither Party shall have any further rights or obligations hereunder, except for those obligations of Developer which by their terms survive expiration or termination hereof, including but not limited to those obligations set forth in Sections 9.2 and 9.3.

ARTICLE 13. GENERAL PROVISIONS

13.1. Condemnation. As used herein, "**Material Condemnation**" means a condemnation of all or a portion of the Property that will have the effect of materially impeding or preventing development of the Project in accordance with this Agreement and the Project Approvals. In the event of a Material Condemnation, Developer may (a) request City to amend this Agreement in accordance with the Development Agreement Statute and/or to amend the Project Approvals, which amendment shall not be unreasonably withheld; (b) decide, in its sole discretion, to challenge the condemnation; and/or (c) deliver a written notice of termination to City declaring a Material Condemnation, which City may elect to dispute. If the condemnationis not a Material Condemnation, Developer shall have no right to terminate this Agreement pursuant to this Section 13.1. Nothing in this Agreement shall be, or deemed to be, any waiver or release by Developer of any compensation or damages awarded pursuant to a Material Condemnation.

13.2. Covenants Binding on Successors and Assigns and Run with 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, lessee, and all other persons or entities acquiring the Property, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code section 65868.5, and shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable laws.

13.3. Notice. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows.

To City: City of San Bruno
567 El Camino Real
San Bruno, CA 94066
Attn: City Manager

with a copy to: City of San Bruno
567 El Camino Real
San Bruno, CA 94066
Attn: City Attorney

To Developer: New Shidai Development LLC
860 Glenview Drive
San Bruno, CA 94066
Attn: Daniel Wong

with a copy to: Meyers Nave
1999 Harrison Street, 9thFloor
Oakland, CA 94612
Attn: Richard D. Pio Roda

Either Party may update or change the person and addresses for the receipt of notices under thisSection 13.3 from time-to-time by delivering written notice to the other Party designating the new person or address, at least ten (10) days prior to the name and/or address change.

13.4. Permitted Delays.

13.4.1. The Term of this Agreement and the Project Approvals and the time within which the Parties shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which there is a Permitted Delay, up to a cumulative extension of one (1) years. A "**Permitted Delay**" shall mean delay beyond the reasonable control of a Party caused by an inability to perform caused by (a) calamities, including without limitation earthquakes, floods, and fire; (b) civil commotion; (c) riots or terrorist acts; (d) lockouts, strikes or other forms of material labor disputes; (e) material shortages of labor, equipment, facilities, materials or supplies; (f) vandalism; (g) failure of transportation or freight embargos; (h) condemnation or requisition; (i) litigation challenge, referendum or initiative, including but not limited to litigation, referenda or initiatives challenging the Project Approvals or any of the Vested Elements; (j) orders of governmental, civil, military or naval authority, including any development, water or sewer moratorium, local

health emergency, or pandemic; (k) the failure of any governmental agency, public utility or communication provider to issue a permit, authorization consent or approval, through no fault of Developer, required for development, construction, use or operation of the Project or portion thereof within typical, standard or customary timeframes; (l) unusually severe weather, but only to the extent that such weather or its effects (including, without limitation, dry out time) result in delays that cumulatively exceed twenty (20) days for any winter season; or (m) changes in local, state or federal laws or regulations, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services that prevents, prohibits, or delays (for more than twenty (20) days cumulatively) construction of the Project; or (n) a temporary inability to perform its financial obligations or obtain financing through no fault of the Party.

13.4.2. 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. An extension of time for any such cause shall be for the period of the Permitted Delay and shall commence to run from the time of the commencement of the cause, if Notice by the Party claiming such extension is sent within thirty (30) days of the commencement of the claimed cause (or in the case of delays pursuant to Section 13.4.1(l) or Section 13.4.1(m), within thirty (30) days after the twentieth (20^{th}) day of cumulative delay). If Notice is sent after such thirty (30) day period, then the extension shall commence to run no sooner than thirty (30) days prior to the giving of such Notice. The period of Permitted Delay shall last no longer than the conditions preventing performance.

13.5. Counterparts. This Agreement may be executed in one or more counterparts, eachof which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.6. 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 or failure to 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 or failures to act in the future.

13.7. Construction of Agreement. All Parties have been represented by counsel in the preparation and negotiation of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. Unless the context clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive; (d) “or” is not exclusive; (e) “includes” and “including” are not limiting; and

(f) "days" means calendar days unless specifically provided otherwise.

13.8. 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.

13.9. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect; provided, if the invalidation, voiding or unenforceability would deprive either City or Developer of material benefits derived from this Agreement, or make performance under this Agreement unreasonably difficult, then City and Developer shall meet and confer and shall make good faith efforts to amend or modify this Agreement in a manner that is mutually acceptable to City and Developer. Notwithstanding the foregoing, if an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provisions, in which case any Party deprived of an essential benefit thereunder shall have the option to terminate this Agreement from and after such determination by providing written notice thereof to the other Party.

13.10. Time is 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. The time limits set forth in this Agreement (other than the Term) may be extended by Permitted Delays or mutual consent in writing of the Parties in accordance with the provisions of this Agreement.

13.11. Other Necessary Acts. Each Party shall in good faith do all things as may reasonably be necessary or appropriate to carry out this Agreement, and the Project Approvals, and to execute with acknowledgment or affidavit if required and deliver to the other, file or submit all such further information, instruments and documents as may be reasonably necessary to carry out the purposes and objectives of the Project Approvals and this Agreement and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges under this Agreement.

13.12. Authority. Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

13.13. Entire Agreement. This Agreement (including all Recitals and all exhibits attached hereto, each of which is fully incorporated herein by reference), integrates all of the terms and conditions mentioned herein or incidental hereto, and constitutes the entire understanding of the Parties with respect to the subject matter hereof, and all prior or contemporaneous oral agreements, understandings, representations and statements, and all prior written agreements, understandings, representations, and statements are terminated and superseded by this Agreement.

13.14. Estoppel Certificate. City or Developer may, from time to time, deliver written notice to the other party requesting written certification that, to the actual knowledge of the certifying party, (a) this Agreement is in full force and effect; (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, or terminated or, if so terminated, identifying the subject of termination; (c) in the certifying party does not have knowledge of Default of the performance of the requesting party, or if in known Default, to describe therein the nature and extent of any such Defaults. Developer shall pay, within thirty (30) days following receipt of City's invoice, the actual costs borne by City in connection with its review of the proposed estoppel certificate, including the costs of attorney review. The City Manager shall be authorized to execute any certificate requested by Developer hereunder. The form of estoppel certificate shall be in a form reasonably acceptable to the City Attorney.

13.15. Recordation of Termination or Expiration. Upon completion of the Project and Developer's performance of all the obligations of this Agreement, or upon any earlier termination of this Agreement upon the mutual written consent of the Parties or as otherwise expressly provided herein, a written statement acknowledging Developer's satisfaction of all obligations under this Agreement or such termination, in form and content reasonably satisfactory to the Parties, shallbe provided by City to be executed by the Parties and recorded by City or Developer in the Official Records of San Mateo County; provided, such recorded document shall identify and preserve those obligations and requirements in this Agreement that survive termination.

13.16. City Approvals and Actions. Whenever a 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.

13.17. Reimbursement of Development Agreement Costs and Fees. Developer shall reimburse City for all its reasonable and actual costs, fees, and expenses incurred in drafting, reviewing, revising, and processing this Agreement, including, but not limited to, recording fees, ordinance publication fees, staff time in preparing staff reports, and staff time, including legal counsel and special counsel fees, for preparation and review of this Agreement and changes requested by Developer. This provision does not expand or change the Developer's obligations under the current Reimbursement Agreement between Developer and City dated March 20, 2019. Should Developer request an Administrative Project Amendment, Major Project Amendment, Operating Memorandum, Agreement Amendment, or any other amendments or revisions to this Agreement after the Agreement has been executed by all Parties, City and Developer shall enter into a reimbursement agreement for Developer to reimburse City for all of its reasonable and actual costs, fees, and expenses incurred in drafting and revising such documents.

13.18. Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that no Party to this Agreement is acting as the agent of any other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the

businesses of Developer, the affairs of the City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise.

13.19. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the signatory Parties and their successors and assigns, including Mortgagees. No other person or entity shall have any right of action based upon any provision in this Agreement, and no other person or entity shall have any third party beneficiary status.

13.20. Governing State Law; Venue. This Agreement shall be construed and enforcedin accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of San Mateo, State of California, or the Federal District Court for the Northern District of California.

13.21. Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A:	Property Legal Description
Exhibit B:	Depiction of the Property
Exhibit C:	Reserved
Exhibit D:	Existing Impact Fees
Exhibit E:	Form of Assignment and Assumption Agreement
Exhibit F:	Affordable Housing Plan

If the County Recorder refuses to record any exhibit, the City Clerk may replace it with asingle sheet bearing the exhibit identification letter, stating the title of the exhibit, the reason it isnot being recorded, and that the original, certified by the City Clerk, is in the possession of the City Clerk and will be reattached to the original when it is returned by the recorder to the City Clerk.

[SIGNATURES ON FOLLOWING PAGE]

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

DEVELOPER: New Shidai Development, LLC
a California limited liability corporation

DocuSigned by:

By: _____

Printed Name: Daniel Wong

Title: Manager

CITY: CITY OF SAN BRUNO
a general law city and municipal corporation

By: _____
Jovan D. Grogan, City Manager

ATTEST:

_____
Melissa Thurman, City Clerk

APPROVED AS TO FORM:

_____
Marc Zafferano, City Attorney

[signatures must be notarized]

ACKNOWLEDGMENTS

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____
Name: _____
Notary Public

ACKNOWLEDGMENTS

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____
Name: _____
Notary Public

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

ORDER NO. : 0216018912-DB

The land referred to is situated in the County of San Mateo, City of San Bruno, State of California, and is described as follows:

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

TRACT A:

Beginning at the most Easterly corner of Lot 16, Block 39, as shown on that certain Map entitled, "CRESTMOOR PARK NO. 7, SAN BRUNO CALIFORNIA", which Map was filed in the Office of the Recorder of the County of San Mateo, State of California on July 2, 1958 in Book 49 of Maps at Pages 19 and 20; thence from said point of beginning North 62° 22' 34" East 184.00 feet to a point; thence South 28° 32' 15" East 163.35 feet to a point on the Northerly Right of Way line of San Bruno Avenue; thence Southwesterly along said Right of Way line from a tangent which bears South 69° 23' 15" West on an arc of a curve to the left, having a radius of 1240.00 feet, a central angle of 6° 55' 51", and an arc length of 150.00 feet; thence leaving said right of way line North 41° 07' 24" West 158.44 feet to the point of beginning.

TRACT B:

Beginning at a point on the Easterly line of Glenview Drive, said point being the Southwesterly corner of Lot 16, Block 39 as said drive, lot and block are shown on that certain map entitled, "CRESTMOOR PARK NO. 7, SAN BURNO, CALIFORNIA", filed in the Office of the County Recorder of San Mateo County, State of California on July 2, 1958 in Book 49 of Maps at Page 19 and 20; thence from said point of beginning along said Easterly line of Glenview Drive South 8° 25' 37" East 62.68 feet, Southeasterly along the arc of a tangent curve to the left with a radius of 140 feet and a central angle of 32° 23' 25" a distance of 79.14 feet and Easterly along the arc of a compound curve to the left with a radius of 30 feet and a central angle of 82° 30' 07", a distance of 43.198 feet to the Northerly line of San Bruno Avenue, as established in Parcel 1-D of the Deed of Dedication Consolidated Lands Incorporated to the City of San Bruno, dated September 26, 1956 and recorded October 16, 1956 in Book 3112 Official Records at San Mateo County at Page 24 (96103-N); thence Easterly along said line of San Bruno Avenue along the arc of a reverse curve to the right with a radius of 1240 feet, through a central angle of 5° 46' 33", an arc distance of 125.00 feet; thence leaving said line of San Bruno Avenue, North 41° 07' 24" West 158.44 feet to the Southeasterly corner of said Lot 16, Block 39; thence along the Southerly boundary of said lot, South 62° 22' 34" West 95.30 feet to the point of beginning.

APN: 019-042-160
019-042-150

JPN: 019-027-270-21A (Affect's Tract A),
019-027-270-20A (Affect's Tract B)

LEGAL DESCRIPTION

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

LOTS 11, 12, 13, 14, 15 AND 16 BLOCK 39, AS SHOWN ON THE MAP ENTITLED, "CRESTMOOR PARK NO, 7, SAN BRUNO, CALIFORNIA", WHICH MAP WAS FILED ON JULY 2, 1958, IN BOOK 49 OF MAPS AT PAGES 19 AND 20, AND AN ADJACENT ACREAGE MORE PARTICULARLY DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF GLENVIEW DRIVE SAID POINT BEING THE NORTHWESTERLY CORNER OF LOT 11 IN BLOCK 39 ALL AS SHOWN ON THE MAP MENTIONED ABOVE; THENCE FROM SAID POINT OF BEGINNING ALONG SAID EASTERLY LINE OF GLENVIEW DRIVE, SOUTH 8° 25' 37" EAST 355.11 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 16, THENCE ALONG THE SOUTHEASTERLY BOUNDARY LINE OF LOT 16 AND ITS NORTHEASTERLY PROLONGATION NORTH 62° 22' 34" EAST 338.84 FEET; THENCE NORTH 8° 25' 37" WEST PARALLEL WITH SAID LINE OF GRANDVIEW DRIVE 243.70 FEET TO THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID LOT 11; THENCE ALONG SAID NORTHERLY LOT LINE AND ITS PROLONGATION SOUTH 81° 34' 23" WEST 320.00 FEET TO THE POINT OF BEGINNING.

JPN: 019-004-042-11 A
019-004-042-12 A

APN: 019-042-170-1

EXHIBIT B

DEPICTION OF PROPERTY

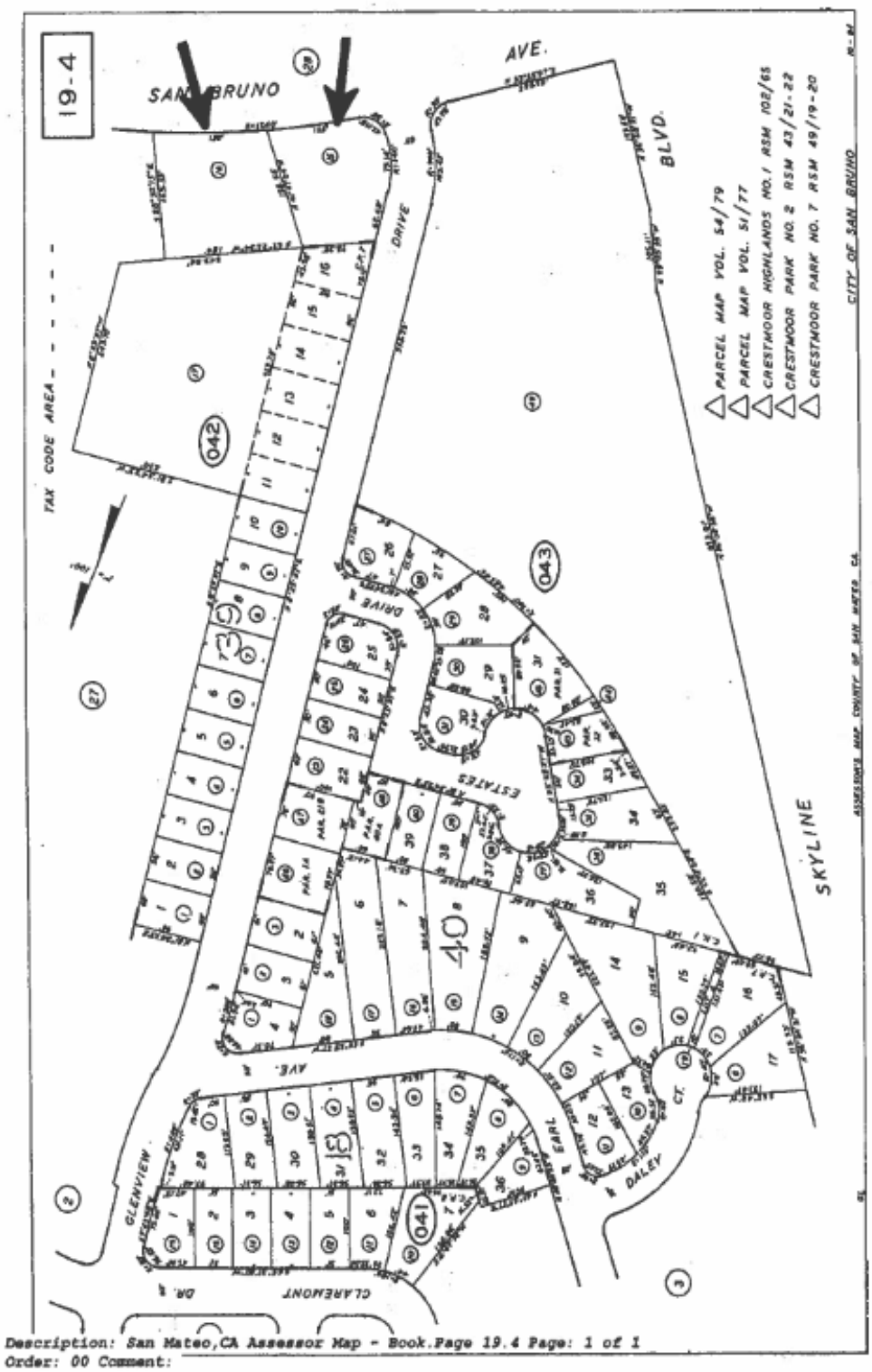

Exhibit B-1

1929\10\3190915.1
1929\10\3315036.2

EXHIBIT C

[RESERVED]

EXHIBIT D

EXISTING IMPACT FEES
[To be provided by City]

Community & Economic Development

XV. Development Impact Fees						
Subject to increase July 1, 2022 based on CCCI						
Land Use	**Community**	**Public Safety**	**General Government**	**Transportation**	**Utilities**	**Total**
Residential						
Single Family (per unit)	$19,128.33	$1,420.38	$2,010.06	$4,183.92	$2,751.84	$29,494.53
Multi Family (per unit)	$17,957.16	$1,419.21	$1,886.04	$3,237.39	$2,583.36	$27,083.16
Non-Residential						
Office (per sq. ft.)	$10.71	$0.71	$1.16	$8.62	$2.13	$23.33
Industrial (per sq. ft.)	$4.26	$0.28	$0.46	$3.45	$1.33	$9.78
Retail (per sq. ft)	$6.90	$0.76	$0.75	$11.10	$13.26	$32.77
Hotel (per room)	$1,752.66	$118.17	$188.37	$1,894.23	$1,516.32	$5,469.75

EXHIBIT E

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

_____
_____
_____
Attention: _____

Exempt from Recording Fee per
Government Code Section 27383

Space Above This Line for Recorder's Use Only

ASSIGNMENT OF RIGHTS AND OBLIGATIONS UNDERDEVELOPMENT AGREEMENT

This Assignment of Rights and Obligations under Development Agreement (this "**Assignment**") is entered into this _____day of _____, 20___("**Effective Date**"),by and between _____, a_____ _____ ("**Assignor**") and _____, a _____ ("**Assignee**"). Assignor and Assignee are collectively referred to herein as the "**Parties**."

R E C I T A L S

A. Assignor and the City of San Bruno, a California municipal corporation ("**City**") have entered into that certain Development Agreement dated as of _____("**DA**")which was recorded in the Official Records of San Mateo County on____ _____as Instrument No._____.

B. ***Assignor*** [has requested approval from the City of the assignment to Assignee described herein pursuant to Section 10.1 of the DA] *OR* [has the right to make the assignment to Assignee under Section 10.1 of the DA.]

C. *[City has consented to the assignment described herein pursuant to Section 10.1of the DA.]* OR *[Assignor has provided the City with documentation establishing that the assignment is appropriate pursuant to Article 10 of the DA because _____.]*

A G R E E M E N T S

NOW, THEREFORE, in exchange for the mutual covenants set forth herein and for othergood and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Assignment and Assumption of Interest. Assignor hereby transfers, assigns and conveys to Assignee, all of Assignor's right, title and interest in and to, and all obligations, duties, responsibilities, conditions and restrictions under, the DA (the "**Rights and Obligations**"). Assignee, for itself and its successors and assigns, hereby accepts the foregoing assignment, assumes all such Rights and Obligations, and expressly agrees for the benefit of City, to pay, perform and discharge all obligations of Assignor under the DA and to comply with all covenants and conditions of Assignor arising from or under the DA.

2. Governing Law; Venue. This Assignment shall be interpreted and enforced in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Assignment shall be filed and litigated exclusivelyin the Superior Court of San Mateo County, California or in the Federal District Court for the Northern District of California.

3. Entire Agreement/Amendment. This Assignment constitutes the entire agreementamong the Parties with respect to the subject matter hereof, and supersedes all prior written and oral agreements with respect to the matters covered by this Assignment. This Assignment may not be amended except by an instrument in writing signed by each of the Parties and consented to in writing by City.

4. Further Assurances. Each Party shall execute and deliver such other certificates,agreements and documents and take such other actions as may be reasonably required to consummate or implement the transactions contemplated by this Assignment and the DA.

5. Benefit and Liability. Subject to the restrictions on transfer set forth in the DA, this Assignment and all of the terms, covenants, and conditions hereof shall extend to the benefitof and be binding upon the respective successors and permitted assigns of the Parties.

6. Rights of City. All rights of City under the DA and all obligations to City under the DA which were enforceable by City against Assignor prior to the Effective Date of this Assignment shall be fully enforceable by City against Assignee from and after the Effective Date of this Assignment.

7. Rights of Assignee. All rights of Assignor and obligations to Assignor under the DA which were enforceable by Assignor against City prior to the Effective Date of this Assignment shall be fully enforceable by Assignee against City from and after the Effective Date

of this Assignment.

8. Release. As of the Effective Date, Assignor hereby relinquishes all rights under the DA, and all obligations of Assignor under the DA shall be terminated as to, and shall have no more force or effect with respect to, Assignor, and Assignor is hereby released from any and all obligations under the DA.

9. Attorneys' Fees. In the event of any litigation pertaining to this Assignment, thelosing party shall pay the prevailing party's litigation costs and expenses, including without limitation reasonable attorneys' fees.

10. City Consent; City Is A Third-Party Beneficiary. City's countersignature below isfor the limited purposes of indicating consent to the assignment and assumption and release set forth in this Assignment (if necessary under the DA) pursuant to Sections 10.1 and 10.2 of the DA, and for clarifying that there is privity of contract between City and Assignee with respect to the DA. The City is an intended third-party beneficiary of this Assignment, and has the right, butnot the obligation, to enforce the provisions hereof.

11. Recordation. Assignor shall cause this Assignment to be recorded in the OfficialRecords of San Mateo County, and shall promptly provide conformed copies of the recorded Assignment to City and Assignee.

12. Address for Notices. Assignee's address for notices, demands and communications under the DA is as follows:

_____
_____
_____

13. Captions; Interpretation. The section headings used herein are solely for convenience and shall not be used to interpret this Assignment. The Parties acknowledge that this Assignment is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both have participated in the negotiation and drafting of this Assignment, this Assignment shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

14. Severability. If any term, provision, condition or covenant of this Assignment or its application to any party or circumstances shall be held by a court of competent jurisdiction, toany extent, invalid or unenforceable, the remainder of this Assignment, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law unless the rights and obligations of the Parties have been materially altered or abridged thereby.

15. Counterparts. This Assignment may be executed in counterparts, each of

whichshall, irrespective of the date of its execution and delivery, be deemed an original, and the counterparts together shall constitute one and the same instrument.

[SIGNATURES START ON NEXT PAGE.]

IN WITNESS WHEREOF Assignor and Assignee have executed this Assignment as of the datefirst set forth above.

ASSIGNOR:

_____, a

_____

By: FORM – DO NOT SIGN

Name:_____ Its:

ASSIGNEE:

_____, a

_____

By: FORM – DO NOT SIGN

Name:_____ Its:

[NOTE: The presence of the signature blocks below in this form shall not be deemed torequire the consent of the City to any assignment that does not otherwise require the consent of City under the DA.]

City of San Bruno, a California municipal corporation, hereby consents to the assignment andassumption described in the foregoing Assignment and Assumption Agreement.

CITY:

CITY OF SAN BRUNO**, a**
California municipal corporation

By:**FORM – DO NOT SIGN**

_____, City Manager

ATTEST:

_____

_____, City ClerkAPPROVED AS TO FORM:

_____

_____, City Attorney

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____
Name: _____
Notary Public

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

STATE OF CALIFORNIA)
)
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

_____
Name: _____
Notary Public

Exhibit F

Glenview Terrace Project Affordable Housing Plan

This affordable housing plan ("**Affordable Housing Plan**") has been prepared for the Glenview Terrace project and satisfies the requirements for an affordable housing plan set forth in Municipal Code Section 12.230.070 and conforms to the requirements of Municipal Code Chapter 12.230, Affordable Housing Program (the "**Affordable Housing Program**").

Developer shall make fifteen percent (15%) of the residential units in the Glenview Terrace residential project (the "**Project**") available at below-market rates to qualifying households (the "**Affordable Units**") as further specified in this Affordable Housing Plan. The number of Affordable Units to be provided onsite as part of the Project as described in this Affordable Housing Plan is four (4) on-site for sale residential units. Any decimal fraction of 0.5 or more shall be rounded up to the next whole number of Affordable Units; any fraction less than 0.5 shall be rounded down, in which case Developer in its discretion shall either (a) make one additional Affordable Unit available or (b) pay City the prorated fee required under the Affordable HousingProgram for such fraction of an Affordable Unit not provided at the fee rate in effect as of the "Effective Date" as such term is defined in the Development Agreement for the Project (the "**Effective Date**").

1. Affordability Requirements of the on-site for sale Affordable Units.

(a) One (1) unit for low income households, as defined in San Bruno Municipal Code section 12.230.020;

(b) Three (3) units for moderate income households, as defined in San Bruno Municipal Code section 12.230.020.

2. Term of Affordability Restrictions. The affordability restrictions set forth in this Affordable Housing Plan shall have a term of 45 years commencing upon the date that a certificate of occupancy is issued for the Affordable Units, and on the date of each resale, and shall be included in the Affordable Housing Agreements (as defined below).

3. Standards for Affordable Units. The Affordable Units shall comply with the affordable housing unit standards set forth in San Bruno Municipal Code Section 12.230.080 in effect as of the Effective Date. By way of illustration but not limitation of the requirements specified in Section 12.230.080, the Affordable Units shall satisfy the following criteria: (a) the Affordable Units shall be reasonably dispersed within the Project, with unit locations comparable to those of the market-rate units, subject to review and approval by the community development director; (b) the number of bedrooms in the Affordable Units shall be comparable to the average number of bedrooms in the market-rate units; (c) the interior finishes and amenities of the Affordable Units may not differ from those provided in the base model market-rate units; (d) the exterior appearance of the Affordable Units shall be compatible with that of market-rate units;

and (e) residents of the Affordable Units shall have access to all common areas and amenities of the Project comparable to residents of market-rate units.

4. Income Limits. Household incomes for Affordable Units will be determined based on the standards and requirements in the San Bruno Municipal Code.

5. Mechanism For Assuring Affordability of the Affordable Units. The Affordable Units will be subject to an Affordable Housing Agreement that will require the imposition of resale restrictions upon sale of the homes to ensure that the Affordable Units remain affordable for the term of the affordability restrictions (as set forth in Section 2 above).

6. Determination of Eligibility for Affordable Units. The Affordable Units will be managed by Developer or City's third-party provider, and City shall determine eligibility for qualified residents and administer affordability criteria.

7. Conceptual Plan for Initial Sales. Developer will coordinate with the City of San Bruno and County of San Mateo Department of Housing to advertise the Affordable Units as available and to identify qualified residents, including posting on SMCHousingSearch.org and providing information to local non-profit groups. To the extent permitted by state and federal law, preferences will be given to those households where at leastone member in the household lives or works in San Bruno or works for a school district servingthe residents of the City, except for those deemed ineligible pursuant to the conflict of interest provisions of Municipal Code Section 12.230.080.C.3.

8. Modifications to Affordable Housing Plan. This Affordable Housing Plan may berefined, modified, or amended pursuant to the process for "Administrative Project Amendments"and "Major Project Amendments" (as such terms are defined in the Development Agreement), asapplicable, set forth in Section 8.2 of the Development Agreement.