

**CITY OF SAN MATEO  
ORDINANCE NO. 2020-**

**APPROVING A DEVELOPMENT AGREEMENT FOR CONCAR PASSAGE MIXED USE PROJECT (PA-2018-052)**

WHEREAS, California Coastal Properties has requested construction of up to 961 residential units, 40,000 square feet of commercial space and associated parking, landscaping, roadway improvements and common areas (the "Project");

WHEREAS, the applicant, California Coastal Properties, has requested that the City enter into a development agreement with Concar Development Partners (the "Agreement"); and

WHEREAS, the applicant wishes assurance that it may proceed with the Project under the laws, regulations, and policies as specified in the Agreement, in effect on the date of the approval; and

WHEREAS, the state legislature has authorized cities to enter into development agreements in order to provide assurance to developers that they may proceed with projects in reliance on existing laws, regulations, and policies; and

WHEREAS, the City, in Resolution No. 120 (1990), has adopted procedures for reviewing and entering into such development agreements; and

WHEREAS, the Planning Commission considered the application on July 28, 2020, and recommended adoption of the Supplemental Environmental Impact Report for the Project (PA-2018-052) and Environmental Impact Report for the Rail Corridor Plan as adequate to analyze the environmental impacts of the project; and

WHEREAS, the Planning Commission recommended approval of the construction of 961 residential units, 40,000 square feet of commercial space associate parking, landscaping, roadway improvements and common areas, subject to the Findings for Approval and Conditions of Approval; and

WHEREAS, the applicant has informed City staff that that applicant will not acquire legal or equitable interests in all of the parcels needed for the Project for up to three years; and

WHEREAS, the applicant has asked that the City Council authorize the City Manager to execute the development agreement upon notice from the applicant that the applicant has acquired legal or equitable interests in all of the parcels needed for the Project; and

WHEREAS, the City Council held a public hearing on August 17, 2020, duly noticed, at which all public comments were considered;

WHEREAS, the City Council introduced the ordinance approving the development agreement on August 17, 2020;

THE COUNCIL OF THE CITY OF SAN MATEO, CALIFORNIA, FINDS THAT:

1. In accordance with Government Code section 65867.5, the Agreement is consistent with the City's General Plan and the Rail Corridor Transit Oriented Development Plan for the reasons set forth in the Findings for Approval, attached as Exhibit A in the Administrative Report that accompanied introduction of this Ordinance, and
2. The Agreement is compatible with the requirements of the City's Zoning Ordinance for the reasons set forth in the Findings for Approval, attached as Exhibit A to the Administrative Report that accompanied introduction of this Ordinance, and
3. For the reasons set forth in the Administrative Report that accompanied introduction of this Ordinance, the Agreement provides substantial public benefits to persons residing or owning property outside the boundaries of the development project, beyond the exactions for public benefits required in the normal development review process under federal, state, or local law; and
4. The Council finds that the environmental impacts of the Agreement were analyzed in the Supplemental Environmental Impact Report and the Environmental Impact Report for the City's Rail Corridor Plan.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF SAN MATEO ORDAINS AS FOLLOWS:

**Section 1.** The Council approves the Development Agreement in substantially the form attached as Exhibit A to this Ordinance and authorizes the City Manager to execute the Development Agreement upon notice from the Applicant that Applicant has obtained legal or equitable interests in all of the parcels needed for the Project, which shall be no later than September 30, 2023. If the Applicant has not notified the City that Applicant has obtained legal or equitable interests in all of the parcels required for the Project by September 30, 2023, this approval terminates.

**Section 2. Environmental Determination.** In accordance with the California Environmental Quality Act, an Environmental Impact Report was prepared for the Rail Corridor Plan and a Supplemental Environmental Impact Report was prepared for this project.

**Section 3. Severability.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared unconstitutional.

**Section 4. Publication.** This Ordinance shall be published in summary in a newspaper of general circulation, posted in the City Clerk's Office, and posted on the City's website, all in accord with Section 2.15 of the City Charter.

**Section 5. Recordation.** In accordance with Government Code Section 65868.5, the Agreement will be recorded no later than 10 days after execution.

**Section 6. Legislative History and Effective Date.** This ordinance was introduced on August 17, 2020, and adopted on September 8, 2020, and shall be effective 30 days after its second reading and adoption.

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

City of San Mateo  
330 West 20th Avenue  
San Mateo, CA 94403  
Attention: City Manager

*Space Above This Line Reserved for Recorder's Use  
Exempt from Recording Fee Per Government Code Section 27383*

**DEVELOPMENT AGREEMENT**

by and between the

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

and

**CONCAR DEVELOPMENT PARTNERS, LLC,**  
a Delaware limited liability company

regarding the

**Concar Passages Mixed-Use Project**

**City of San Mateo, California**

Effective Date: \_\_\_\_\_

## Table of Contents

	Page
ARTICLE 1 GENERAL PROVISIONS .....	3
A. <u>City and State Laws</u> .....	3
B. <u>Term</u> .....	3
C. <u>Life of Project Approvals</u> .....	3
D. <u>Development of Property</u> .....	4
E. <u>Commencement and Timing of Development</u> .....	4
F. <u>Vested Rights</u> .....	4
G. <u>No Waiver of Rights to Existing Uses or Structures</u> .....	4
H. <u>Police Powers</u> .....	4
I. <u>Covenant of Good Faith</u> .....	4
ARTICLE 2 DEFINITIONS.....	5
ARTICLE 3 OBLIGATIONS OF DEVELOPER AND CITY .....	8
A. <u>Obligations of Developer</u> .....	8
B. <u>Obligations of City</u> .....	9
ARTICLE 4 DEVELOPMENT OF PROPERTY.....	11
A. <u>Applicable New City Laws</u> .....	11
B. <u>Initiative and Moratoria</u> .....	11
C. <u>Subsequent Discretionary Powers</u> .....	12
D. <u>Subsequent Approvals</u> .....	12
E. <u>Other Agency Subsequent Approvals; Authority of City</u> .....	12
F. <u>Application, Processing and Inspection Fees</u> .....	13
G. <u>No New Development Impact Fees or Exactions</u> .....	13
H. <u>Subdivision Maps</u> .....	13
I. <u>Subsequent CEQA Review</u> .....	14
J. <u>Processing During Third-Party Litigation</u> .....	14
K. <u>Cooperation in the Event of Third-Party Legal Challenge</u> .....	14
ARTICLE 5 AMENDMENT OR CANCELLATION .....	15
A. <u>Amendments to Agreement (Developer and City)</u> .....	15
B. <u>Superseding State or Federal Laws</u> .....	15
ARTICLE 6 INDEMNIFICATION.....	15
ARTICLE 7 MORTGAGEE PROTECTION AND ESTOPPEL CERTIFICATES.....	16

A.	<u>Mortgagee Protection</u> .....	16
B.	<u>Estoppel Certificates</u> .....	17
ARTICLE 8 ANNUAL REVIEWS .....		17
A.	<u>Annual Reviews</u> .....	17
B.	<u>Notice of Default</u> .....	17
C.	<u>Planning Commission Determination Regarding Good Faith Compliance</u> .....	17
D.	<u>Planning Commission Determination Regarding a Health or Safety Danger</u> .....	17
E.	<u>Action by City Council</u> .....	18
ARTICLE 9 DEFAULT; REMEDIES; TERMINATION .....		18
A.	<u>Events of Default and Remedies</u> .....	18
B.	<u>Termination</u> .....	19
C.	<u>Judicial Proceeding to Challenge Termination</u> .....	19
D.	<u>Rights and Remedies Are Cumulative</u> .....	19
E.	<u>No Cross-Default</u> .....	19
ARTICLE 10 MISCELLANEOUS .....		20
A.	<u>Enforceability</u> .....	20
B.	<u>Default by Developer; Withholding of Building Permits</u> .....	20
C.	<u>Covenants Run with the Land</u> .....	20
D.	<u>No Waiver</u> .....	20
E.	<u>Force Majeure</u> .....	20
F.	<u>No Joint Venture or Partnership</u> .....	21
G.	<u>Applicable Law and Venue</u> .....	21
H.	<u>Severability</u> .....	21
I.	<u>Attorneys' Fees</u> .....	21
J.	<u>Recordation of Termination</u> .....	21
K.	<u>Counterparts; Entire Agreement</u> .....	21
L.	<u>Incorporation of Recitals and Exhibits</u> .....	21
ARTICLE 11 ASSIGNMENT AND TRANSFER.....		22
A.	<u>Assignment and Transfer</u> .....	22
B.	<u>Pre-Approved Transferees</u> .....	22
C.	<u>Assumption and Release</u> .....	22
D.	<u>Successive Assignment</u> .....	23
ARTICLE 12 NOTICES .....		23

## EXHIBITS

- Exhibit A - Property Description
- Exhibit B - Timing of Supplemental Transportation Fee Payment Contributions
- Exhibit C - Site Plans for Public Benefit Facilities
- Exhibit D - Pedestrian and Bike Improvements
- Exhibit E - Potential Off-site Locations for Use of Transportation Contributions
- Exhibit F - Impact Fees
- Exhibit G - Form of Assumption Agreement

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (this “Agreement”) is made and entered into as of the Execution Date (as defined in Article 2B below), by and between the **CITY OF SAN MATEO**, a California municipal corporation (“City”), and **CONCAR DEVELOPMENT PARTNERS, LLC**, a Delaware limited liability company (“Developer”), pursuant to the authority of Sections 65864 through 65869.5 of the Government Code of the State of California (the “Development Agreement Statutes”) and City Council Resolution No. 120 (the “Development Agreement Resolution”). City and Developer are sometimes referred to herein as the “Parties.”

### RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California enacted the Development Agreement Statutes, authorizing municipalities to enter into development agreements in connection with the development of real property within their jurisdiction with persons having a legal or equitable interest in such real property.

B. The purpose of the Development Agreement Statutes is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations.

C. As authorized by Government Code Section 65865(c), the City has adopted the Development Agreement Resolution establishing the procedures and requirements for the consideration of development agreements within the City.

D. Developer has contract rights to acquire a fee or ground leasehold interest in that certain real property located 640, 666, 678 and 690 Concar Drive; 1820 and 1850 S. Grant Street; and 1855 S. Delaware Street, San Mateo, California (APNs 035-242-090, -140, -160, -170, -190, -200, -210, -220), and shown and more particularly described in **Exhibit A** attached hereto (the “Property”).

E. On July 6, 2005, the City Council of the City of San Mateo (the “City Council”) adopted the San Mateo Rail Corridor Transit-Oriented Development Plan (the “Corridor Plan”), a plan formulated with the express goal of pursuing transit-oriented development within the transportation corridor along the Caltrain right-of-way.

F. On May 7, 2007, the City Council adopted an ordinance amending the City’s zoning regulations by establishing a transit-oriented development district (the “TOD District”) in which all uses must be consistent with the development standards, policies and guidelines specified in the Corridor Plan, and by rezoning those properties (including the Property) designated as Transit Oriented Development in the Corridor Plan.

G. On October 18, 2010, the City Council adopted Ordinance No. 134-2010, which approved an update to the City’s General Plan (the “General Plan”).

H. The Property is designated as *Transit-Oriented Development* under the 2030 General Plan; is zoned *TOD-Transit Oriented Development* and located in Area 2 of the Hayward Park Station TOD Overlay Zone of the Corridor Plan; and is designated as Neighborhood/Commercial Retail/Residential



with a band of Ground Floor Retail along Concar Drive and High-Density Residential/Office along Delaware Street.

I. Developer desires to develop the Property into a transit-oriented, high-density mixed-use development as encouraged and permitted by the General Plan (as defined in Article 2C below), the Corridor Plan and the TOD District.

J. On September 18, 2018, Developer submitted Planning Application No. 18-052 (the “**Planning Application**”) for, among other things, a Site Plan and Architectural Review; Site Development Planning Application and Vesting Tentative Map to demolish the existing 165,000 square foot retail strip center and adjoining surface parking and develop the Property into a transit-oriented development consisting of 961 residential units (of which will be ten percent (10%) affordable) and 40,000 square feet of commercial space, with 3 acres of open space, circulation, parking, infrastructure and grading improvements, and one level of below-grade parking (the “**Project**”).

K. Developer has committed to contribute toward the development of significant public infrastructure and other improvements in excess of what Developer could otherwise be legally required to provide (collectively, the “**Public Benefits**”).

L. In exchange for the Public Benefits, Developer desires this Agreement with the City to assure that Developer shall, at the time of application, be entitled to proceed to construct and complete the Project at any time within the Term (as defined in Article 1B below), subject only to the terms and conditions set forth in this Agreement, including, without limitation, providing the Public Benefits in accordance with Article 3A.1 below. City finds a substantial public benefit in the provision of the Public Benefits and the other benefits set forth in this Agreement.

M. City has determined that the Project is a development for which a development agreement is appropriate. A development agreement will eliminate uncertainty in the City’s land use planning for the Property, assure installation of necessary improvements and mitigation appropriate to the development of the Project, assure attainment of the maximum effective utilization of resources within the City at the least economic cost to its citizens, secure public improvements and other amenities that could not otherwise be obtained, and otherwise achieve the goals and purposes for which the Development Agreement Resolution was enacted by the City.

N. City has examined the environmental effects of the Project and the Public Benefits, and this Agreement pursuant to the California Environmental Quality Act (“**CEQA**”) through preparation of an Initial Study and Supplemental Environmental Impact Report (“**SEIR**”), State Clearinghouse (“**SCH**”) No. 2019039072. Pursuant to CEQA Guidelines § 15152, the SEIR tiers from the Final Environmental Impacts Reports previously prepared and adopted by the City for the Corridor Plan (SCH # 2003042170) and the 2030 General Plan (SCH # 2009032009). The City issued a Notice of Availability for public comments for the SEIR on March 25, 2020, and filed a Notice of Completion (“**NOC**”) for the SEIR on March 26, 2020.

O. On August 17, 2020, the City Council reviewed and adopted the SEIR, including a Mitigation Monitoring and Reporting Program (“**MMRP**”); as adequate to assess the environmental effects of the Project and the Public Benefits in addition to the Planning Application, including this Agreement. The terms and conditions of this Agreement are consistent with and within the scope of the SEIR. Except as potentially required for the exercise of Subsequent Discretionary Powers (as defined in Article 4C below), no further environmental documentation is anticipated.

P. After conducting a duly noticed public hearing on July 28, 2020, the Planning Commission of the City (the “**Planning Commission**”) reviewed, considered, and recommended approval of (1) the SEIR, and (2) the Planning Application, including this Agreement, thereby authorizing development of the Project and provision of the Public Benefits.

Q. After conducting a duly noticed public hearing on August 17, 2020, and after independent review and consideration, the City Council introduced Ordinance No. \_\_\_\_\_ directing the City Manager to execute this Agreement upon Developer obtaining rights to acquire a fee or ground leasehold interest in the Property (the “**Enacting Ordinance**”), and, by resolution, the Planning Application, thereby authorizing development of the Project and provision of the Public Benefits. In the event that Applicant does not obtain fee or ground leasehold interests in the Property by September 30, 2023, the City Council’s approval of, and authorization to execute, this Agreement will terminate. The City Council also found that the provisions of this Agreement are consistent with the City’s General Plan as well as the Corridor Plan, are compatible with the requirements of the City’s zoning ordinance and provide substantial public benefits to persons residing or owning property outside the boundaries of the Project, beyond the exactions for public benefits required in the normal development review process under federal, state, or local law. In exchange for providing these public benefits, Developer receives assurance from City that Developer shall be entitled to proceed with development of the Project and provision of the Public Benefits in accordance with the Planning Application and the Existing City Laws (as defined in Article 3B.2 below), subject only to the terms and conditions contained in this including, without limitation, Article 4C below. The Enacting Ordinance becomes effective thirty days after adoption and is incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and the foregoing recitals, which are incorporated herein by reference and made a part of this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Developer hereby agree as follows:

## **ARTICLE 1 GENERAL PROVISIONS**

A. **City and State Laws.** This Agreement is subject to applicable law pertaining to development agreements, specifically the Development Agreement Resolution and the Development Agreement Statutes.

B. **Term.** The term of this Agreement (the “**Term**”) shall commence upon the Effective Date and shall expire Twelve (12) years after the Effective Date, unless terminated, modified or extended, as provided herein, or under the Development Agreement Statutes and the Development Agreement Resolution.

C. **Life of Project Approvals.** All Existing Approvals as well as all subdivision approvals (including, without limitation, the Subdivision Maps referenced in Article 4H below), Site Plan and Architectural Review (“**SPAR**”) permits, Site Development permits, use permits, grading permits, building permits, sewer and water connection permits, certificates of occupancy, lot line adjustments, parcel maps and/or subdivision maps, building plans and specifications, and any other land use and development approvals for the Project and the Public Benefits (including but not limited to any tentative or other subdivision maps) (collectively, “**Subsequent Approvals**”) granted, issued or approved by the City shall be effective and valid for the duration of the Term, unless a longer period is permitted under otherwise Applicable Law.

D. Development of Property. City approves and consents to the development of the Property and to the construction of the Project in substantial conformity with the Planning Application at any time during the Term, but only on the condition that:

1. Developer complies with all conditions of approval of the Planning Application (**“Conditions of Approval”**);

2. Developer complies with its obligations with respect to Public Benefits; and

3. A building permit application or applications for the substantive components of the Project has or have been filed prior to expiration of the Term, which building permits may be extended administratively for up to eighteen (18) months beyond the expiration of the Term to ensure substantial completion of the Project by that time. This provision shall survive the expiration of the Term.

E. Commencement and Timing of Development. The Parties acknowledge that except for any express deadlines set forth in this Agreement, including the schedule for the provision of Public Benefits attached hereto as **Exhibit B** (the **“Timing of Transportation Contributions”**), and in the Conditions of Approval, Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment. This includes, without limitation, using some portions of the Property as construction staging areas during construction on other portions of the Property. Should Developer cease development at any phase, within 90 days of cessation of work, Developer shall submit for approval by the City a plan that will address circulation and safety concerns within and adjacent to the project site.

F. Vested Rights. Developer shall have the vested right to develop the Property, construct the Project and provide the Public Benefits, in accordance with the Project Approvals, the terms of this Agreement, and the Existing City Laws (as defined in Article 3B.2 below), provided, however, that this Agreement shall not supersede, diminish or impinge upon vested rights secured pursuant to other Applicable Laws, including without limitation, vested rights secured in connection with the Vesting Tentative Map pursuant to the California Subdivision Map Act (Gov’t Code §§ 66410 et seq.).

G. No Waiver of Rights to Existing Uses or Structures. Notwithstanding anything set forth in this Agreement to the contrary, under no circumstances shall Developer be obligated to proceed with the Project or any portion of the Project, and, at any time Developer shall be entitled to apply to the City for approvals to develop different projects, and/or to make repairs, improvements, additions and renovations to the existing buildings, structures, landscaping and infrastructure at the Property (the **“Existing Improvements”**), in conformance with the San Mateo Municipal Code (the **“Municipal Code”**). City agrees not to unreasonably or arbitrarily withhold, condition, or delay consent to such repairs, improvements, additions and renovations to the Existing Improvements. City expressly acknowledges that Developer has not abandoned or relinquished any rights to the Existing Improvements or the existing uses at the Property.

H. Police Powers. Except as otherwise provided in this Agreement, the City reserves its police powers unto itself.

I. Covenant of Good Faith. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement.

## ARTICLE 2 DEFINITIONS

A. **“Applicable City Laws”** means (1) all City policies, standards and specifications set forth in this Agreement and the Existing Approvals, including the specific conditions of approval adopted with respect to the Existing Approvals; (2) with respect to matters not addressed by this Agreement or the Existing Approvals but governing permitted uses of the Property, building locations, sizes, densities, intensities, design and heights, site design, setbacks, lot coverage and open space, and parking, those City ordinances, rules, regulations, official policies, standards and specifications in force and effect on the Effective Date; and (3) with respect to all other matters, including building, plumbing, mechanical and electrical codes, those City ordinances, rules, regulations, official policies, standards and specifications in force and effect as may be enacted, adopted and amended from time to time, including New City Laws, except those in conflict with this Agreement.

B. **“Applicable Law”** means: (1) all State and Federal laws and regulations applicable to the Property and the Project as enacted, adopted and amended from time to time; and (2) the Applicable City Laws.

C. **“Applicable New City Laws”** as defined in **Article 4A**.

D. **“Assumption Agreement”** as defined in **Article 11C**.

E. **“Blocks”** as defined in **Article 4H.1**.

F. **“CEQA”** as defined in Recital N above.

G. **“City Council”** as defined in Recital E above.

H. **“City Laws”** as defined in **Article 3B.2**.

I. **“City Manager”** as defined in **Article 9B**.

J. **“Conditions of Approval”** as defined in **Article 1D.1** above.

K. **“Corridor Plan”** as defined in Recital E above.

L. **“Effective Date”** means the Execution Date.

M. **“Election to Proceed”** as defined in **Article 7A.2**.

N. **“Enacting Ordinance”** as defined in Recital Q above.

O. **“Event of Default”** as defined in **Article 9A.1**.

P. **“Execution Date”** means the date on which all signatures to this Agreement have been obtained. The Parties acknowledge that the Execution Date shall not occur until Developer has acquired a legal or equitable interest in the Property, which must be no later than September 30, 2023. After September 30, 2023, the City Council’s approval of, and authorization to execute, this Agreement terminates. The City Manager shall execute the Agreement within five (5) days of the Developer’s notice that it has acquired a legal or equitable interest in the Property.

Q. “**Exactions**” is defined as those exactions that may be imposed by the City as conditions of developing the Project, including but not limited to requirements for acquisition, dedication or reservation of land, obligations to design, construct or fund 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, measures imposed for the protection of the public health or safety or impositions made under Applicable Law.

R. “**Existing City Laws**” as defined in **Article 3B.2**.

S. “**Existing Improvements**” as defined in **Article 1G** above.

T. “**Existing Project Approvals**” means the Resolution No. \_\_\_\_\_ approving the Planning Application and Ordinance No. \_\_\_\_\_ adopting the Development Agreement

U. “**Force Majeure**” as defined in **Article 10E**.

V. “**General Plan**” means the City of San Mateo General Plan, adopted by the City Council on July 16, 1990, including subsequent amendments thereto, in effect on the Execution Date.

W. “**Good Faith Compliance**” as defined in **Article 8A**.

X. “**Health or Safety Danger**” as defined in **Article 4B**.

Y. “**Indemnified Parties**” as defined in **Article 6**.

Z. “**Master Tentative Maps**” as defined in **Article 4H.1**.

AA. “**MMRP**” as defined in Recital O above.

BB. “**Mortgage**” means: (1) any mortgage or deed of trust or other transaction in which the Property, or a portion thereof or a direct or indirect ownership or other interest therein, or any improvements thereon, is conveyed or pledged as security; or (2) a sale and leaseback arrangement in which the Property, or a portion thereof, or any improvements thereon, is sold and leased back concurrently therewith.

CC. “**Mortgagee**” means any holder of a beneficial interest (or the owner and landlord in the case of any sale and leaseback arrangement) under a Mortgage.

DD. “**Municipal Code**” as defined in **Article 1G** above.

EE. “**NOC**” as defined in Recital N above.

FF. “**Open Spaces**” as defined in **Article 4H.1**.

GG. “**Other Agency Subsequent Approvals**” means Subsequent Approvals to be obtained from entities other than City.

HH. “**PCE**” as defined in **Article 3A.1.e**.

II. “**Planning Application**” as defined in Recital J above.

JJ. **“Planning Commission”** as defined in Recital P above.

KK. **“Pre-Approved Transferees”** as defined in **Article 11B**.

LL. **“Processing Fees”** means all fees imposed by the City and payable upon the submission of an application for a permit or approval, which cover only the estimated actual costs of processing that application, and are not only applicable to the Project but applied citywide.

MM. **“Project”** as defined in Recital J above.

NN. **“Project Approvals”** means the Existing Project Approvals and Subsequent Approvals.

OO. **“Property”** as defined in Recital D above.

PP. **“Public Benefits”** as defined in Recital K above.

QQ. **“SCH”** as defined in Recital N above.

RR. **“SEIR”** as defined in Recital N above.

SS. **“SPAR”** as defined in **Article 1C** above.

TT. **“Streets”** as defined in **Article 4H.1**.

UU. **“Subsequent Approvals”** means the approvals defined in **Article 1C** above.

VV. **“Subsequent Discretionary Powers”** as defined in **Article 4C**.

WW. **“Subsequent Tentative Map”** as defined in **Article 4H.2**.

XX. **“Superseding State or Federal Laws”** as defined in **Article 5B**.

YY. **“Supplemental Transportation Fee Payment”** as defined in **Article 3A.1.h**.

ZZ. **“Term”** as defined in **Article 1B** above.

AAA. **“Timing of Supplemental Transportation Fee Payment Contributions”** as defined in **Exhibit B**.

BBB. **“TOD District”** as defined in Recital F above.

CCC. **“Transfer”** as defined in **Article 11A**.

DDD. **“Transferee”** as defined in **Article 11A**.

EEE. **“Transferred Parcel”** as defined in **Article 11A**.

### ARTICLE 3 OBLIGATIONS OF DEVELOPER AND CITY

A. Obligations of Developer.

1. Public Benefits. Subject to the terms and conditions of this Agreement, Developer shall provide the following Public Benefits:

a. Public Mobility Hub. Construction and maintenance of on-site approximately mobility hub for public and private transportation services accessible to the public substantially in the form depicted on the site plan attached hereto as **Exhibit C**. Once constructed, the public mobility hub shall be reserved for the life of the Project.

b. Day Care Facility. Construction of day care facility with outdoor play area substantially in the form depicted on the site plan attached hereto as **Exhibit C**. The day care facility space shall be reserved for day care operations for the life of the Project

c. Community Theater. Construction of a community performance theater substantially in the form depicted on the site plan attached hereto as **Exhibit C**. The community theater shall be reserved for community theater for the life of the Project, unless a different use is approved pursuant to a subsequent planning application.

d. Affordable Housing. As approved in the Project Approvals.

e. Energy Provider. Procure energy from the Peninsula Clean Energy ("**PCE**") 100% Renewable Program, to the extent PCE or its successor-in-interest remains an operational and/or solvent community choice aggregator during the Term of this Agreement.

f. Parks and Public Spaces. Construction and maintenance of publically accessible parks and open space substantially in the form depicted on **Exhibit C**.

g. Pedestrian and Bike Improvements. Construct the pedestrian and bike improvements as shown on **Exhibit D**.

h. Supplemental Transportation Fee Payment. In addition to City's transportation impact fees levied against the Project, Developer shall pay Seven Million, Five Hundred Thousand Dollars (\$7,500,000) to City to fund off-site traffic improvements ("**Supplemental Transportation Fee Payment**"). The City shall hold Supplemental Transportation Fee Payment fees in a designated special, interest-bearing account dedicated for improvements within one half (½) mile of the Property as well as potential improvements to Delaware to 28<sup>th</sup> and Fashion Island Blvd. to Mariner's Island Blvd. The City will conduct further feasibility analyses, engineering and outreach to determine the improvements to be constructed. The City may use the fees for traffic improvements that may include, but shall not be limited to, the following improvements along the 19th Avenue Fashion Island Corridor as shown on **Exhibit E**:

- i) Two way conversion (add west bound lanes)
- ii) Delaware/19th Avenue and Grant/19th Avenue intersection and signal modification
- iii) Add southbound US 101 on-ramp lane



- iv) Westbound right turn lane on Fashion Island Boulevard
- v) Lengthen eastbound left-turn pocket at Norfolk/Fashion Island Boulevard
- vi) Reversible lane on Bridge
- vii) Signal coordination (entire corridor)
- viii) Convert eastbound right-turn lane to one through lane and one through/right turn lane

i. Supplemental Transportation Fee Payment Timing. Developer shall provide the monetary payments for traffic improvements described above in accordance with the schedule contained at **Exhibit B**. The Parties acknowledge that the monetary amounts contained at **Exhibit B** were based on construction costs as of the Effective Date, and shall be annually adjusted based on the Engineering News-Record (ENR) Construction Cost Index for San Francisco.

j. Sales Tax Point of Sale Designation. Developer shall include a provision in its construction documents requiring contractors to use diligent good faith efforts (but without increasing the cost of materials) to require all persons and entities providing bulk lumber, concrete, structural steel and pre-fabricated building components, such as roof trusses, to be used in connection with the construction and development of, or incorporated into, the Project, to either (1) obtain a use tax direct payment permit or (2) elect to obtain a sub-permit for the job site of a contract valued at Five Millions Dollars (\$5,000,000) or more in order to have the local portion of the sales and use tax distributed directly to the City instead of through the countywide pool. The City shall facilitate Developer's compliance with this provision by providing assistance from the City's sales tax consultant.

k. Grant Funding Partnership. If requested in writing by City, Developer shall cooperate in applying for grant funding in connection with pursuing funding for transportation improvements. Developer shall not be obligated to reimburse City for costs associated with pursuing such funding

2. Timing. Except as provided in **Exhibit B** regarding the timing of the Supplement Transportation Fee Payment, public benefits shall be provided concurrently with construction of the improvements that are in the same final map.

3. Modifications. To the extent that a public benefit requires modification, the Developer may submit a request for a modification in accordance with the City's development agreement procedures, unless such modification is authorized under this Agreement.

#### B. Obligations of City

1. Development Plan Shall Not Be Diminished or Impeded by City. City agrees that during the Term, the timing, size, scope, nature, and Conditions of Approval of the Project shall not be changed, affected, modified, delayed, or diminished, regardless of any increased burden of pending, proposed or future developments on public facilities, including, without limitation, roads, water systems, roadways, intersections, sanitary sewers, storm sewers, utilities, traffic signals, curb gutters, sidewalks, parks, amenities, recreation areas, landscaping, schools, landfill, and other off-site improvements, except for requirements imposed by State or Federal law, and that no further CEQA compliance will be required of the Project as described in the Planning Application. Without limiting the foregoing, City further agrees that during the Term, with the exception of Public Benefits and the Conditions of Approval, no



construction or contribution toward funding additional infrastructure or other improvements shall be required of Developer by City in connection with the Project, except for requirements imposed by State or Federal law. City shall take no action nor impose any condition that would conflict with this Agreement or the implementation of the Project or the Planning Application, including, without limitation, by: (i) reducing the density or intensity of the Project (including but not limited to floor area ratios of commercial/retail building or residential density), or any part thereof; (ii) reducing the height or bulk of the Project, or any part thereof; (iii) forbidding or limiting any permitted land uses; (iv) controlling the rate, timing, phasing or sequencing of the development of the Project; (v) controlling the availability of or any privileges or rights to public utilities, services or facilities; (vi) impose requirements for reservation or dedication of land for public purposes or requirements for infrastructure, public improvements, or public utilities, other than as provided in the Project Approvals or pursuant to this Agreement (vii) impose conditions upon development of the Property other than as permitted by the Existing City Laws, Applicable New City Laws or Superseding State or Federal Laws, the Project Approvals and this Agreement; (viii) limit the location of building sites, grading or other improvements on the Property in a manner that is inconsistent with this Agreement or the Project Approvals; (ix) frustrate in a material way the intent or purpose of Project Approvals in relation to the Project ; (x) require the issuance of additional permits or approvals by the City other than those required by Applicable Law controlling rents, purchase prices, ownership association fees or common area charges within the Project; (xi) limiting the processing or procuring of applications for Subsequent Approvals; (xii) or imposing any development impact fees other than Existing City Laws, except as specifically permitted under Article 4.G below.

2. Existing City Laws. Except as specifically provided herein, City's charter, General Plan, Corridor Plan, ordinances, resolutions, codes, rules, regulations and official policies governing the permitted uses of land, density and intensity of use, maximum height, bulk, size, design, location, setbacks, lot coverage and open space, parking and construction standards and specifications applicable to the Project, the Property, the Public Benefits, and the property on which the Public Benefits will be constructed (collectively, the "**City Laws**") shall be only those City Laws in effect as of the Effective Date, without regard to any amendments or modifications thereto that become effective after the Effective Date (the "**Existing City Laws**"). City acknowledges and agrees that under the Existing City Laws, Developer shall be entitled to build and occupy the Project on the Property. If Developer applies for changes to the Existing City Laws during the Term, City agrees that it will process such applications pursuant to State law and the Municipal Code.

3. Recording. Pursuant to Government Code section 65868.5, within ten (10) days after this Agreement is executed by the Parties hereto, the City shall submit a complete original of this Agreement to the Recorder's Office of the County of San Mateo, California, to be recorded and shall provide Developer with a certified copy of such recordation. From and after the time of such recordation, this Agreement shall impart such notice thereof to all persons as is afforded by the recording laws of this State, and the burdens of this Agreement, including all its exhibits, shall be binding upon, and the benefits of this Agreement, including all exhibits, shall inure to, all successors in interest to the Parties. If the Parties or their successors-in-interest amend, modify, cancel or terminate this Agreement pursuant to its terms, City shall have notice of such action recorded with the Recorder's Office of the County of San Mateo, California, within ten (10) days, and shall provide Developer with a certified copy of such recordation.

## ARTICLE 4 DEVELOPMENT OF PROPERTY

A. Applicable New City Laws. Notwithstanding Article 3B.2 above, City may apply the following new City Laws to the Project, the Property, the Public Benefits, and the property on which the Public Benefits will be constructed (“Applicable New City Laws”):

1. New City Laws that (a) are not inconsistent with and do not conflict with the Existing City Laws, the Planning Application, the Project, or the Conditions of Approval, (b) do not diminish any of Developer’s rights granted in this Agreement or increase any of Developer’s obligations with respect to the Project, including, without limitation, as provided under Article 3B above, and (c) are not inconsistent with and do not conflict with any of the terms or conditions of this Agreement provided such New City Laws are uniformly applied to all substantially similar types of development projects and;

2. New City Laws that are specifically mandated and required by changes in State or Federal laws and regulations; and

3. New City Laws that are applicable to the following situations and are in effect at the time that Developer submits an application for a building permit for the Project:

a. Procedural requirements for building and occupancy permit application submittal and issuance;

b. Construction standards pursuant to all Uniform Building Codes incorporated by the Municipal Code;

c. Engineering specifications for construction of any off-site public improvements such as curbs, gutters, and sidewalks;

d. Building security requirements adopted pursuant to Title 23 of the Municipal Code;

e. Any requirements applicable upon issuance of a building permit for which City acts as an administering agent for any State or Federal agency; and

f. Any Processing Fees, in accordance with Article 4D, below.

B. Initiative and Moratoria. In the event that any ordinance, resolution, general plan amendment, specific plan or specific plan amendment, or other measure is enacted, whether by action of the City, by initiative, referendum, or otherwise, which relates to the timing of development, the size or scope of all or any part of the Project, or the conditions, mitigation measures, exactions, or impact fees to be imposed on all or any part of the Project, City agrees that such ordinance, resolution, general plan, specific plan or other measure shall not apply to the Project, the Property, the Public Benefits, the property on which the Public Benefits will be constructed, or this Agreement; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. It is the desire of the Parties to avoid the result in Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), in which the California Supreme Court held that because the parties there had failed to consider and expressly provide for the timing of development, a later-adopted initiative restricting the timing of development prevailed over the parties’ agreement. City shall reasonably cooperate with Developer and, at Developer’s expense, shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. City shall use reasonable efforts to not support, adopt or enact any New

City Laws that would violate any express provisions of this Agreement Subject to Applicable Law relating to the vesting provisions of development agreements, Developer and City intend that, except as otherwise provided herein, this Agreement shall vest the Project Approvals against subsequent City resolutions, ordinance, growth control measures and initiatives or referenda, other than a referendum that specifically overturns City's approval of the Project Approvals, that would directly or indirectly limit the rate, timing, or sequencing of development, or would prevent or conflict with the land use designations, permitted or conditionally permitted uses on the Property, design requirements, density or intensity of uses as set forth in the Project Approvals, and that any such resolution, ordinance, initiative, or referendum shall not apply to the Project Approvals and the Project. Without limiting the foregoing, Article 3B above, City agrees that no moratorium or other limitation (whether relating to the timing or sequencing of the development, or the size, scope, conditions, or construction of all or any part of the Project) affecting building permits or other entitlements to use or development which are approved or to be approved, issued or granted within the City, or portions of the City, shall apply to the Project, the Property, the Public Benefits, the property on which the Public Benefits will be constructed, or this Agreement, unless such moratorium or other limitation has been adopted by City as an emergency ordinance on the basis of its finding that a significant public health or safety emergency exists such that the failure of the City to terminate or modify the provisions of this Agreement would place the residents of the City in a condition dangerous to their health or safety (a "**Health or Safety Danger**"), in which case the Term shall be extended automatically for a period of time equal to that of such emergency moratorium or other limitation affecting development of the Project. Developer reserves the right to challenge any such limitation in a court of law should it become necessary to protect or enforce the provisions and intent of this Agreement.

C. Subsequent Discretionary Powers. Developer acknowledges that the Existing City Laws contemplate the exercise of subsequent discretionary powers by the City, subject to City's obligations under Article 3B. These constitute "**Subsequent Discretionary Powers**," and may include, without limitation, Subsequent Approvals and finalization of the financing actions necessary to implement the monitoring and implementation of environmental mitigation measures. Except as otherwise expressly provided herein, the City shall not impose requirements or conditions upon Project development and construction that are inconsistent with the Project Approvals, Applicable New City Laws and the terms and conditions of this Agreement. Further, except as expressly provided herein, City shall not exercise discretion in determining whether or how to grant Subsequent Discretionary Powers in a manner that would prevent development of the Project for the uses and up to the maximum intensity of development set forth in the Existing Approvals.

D. Subsequent Approvals. All Subsequent Approvals shall be deemed incorporated herein and vested as of the Effective Date as long as such Subsequent Approvals are deemed to be in substantial conformance with the Project Approvals. Subsequent Approvals that are deemed to be modifications will be processed in accordance with Municipal Code Section 27.08.080 [Modifications] and vested as of the effective date of such approvals.

E. Other Agency Subsequent Approvals; Authority of City. City shall cooperate with Developer, to the extent appropriate and as permitted by law, in Developer's efforts to obtain, as may be required, Other Agency Subsequent Approvals. Developer agrees that City may review, modify, approve and/or reject any such materials or applications to ensure consistency with this Agreement and the Project Approvals and Developer shall incorporate any and all changes required by City prior to submitting such materials and applications to the other governmental or quasi-governmental entities for review and/or approval.

F. Application, Processing and Inspection Fees. Processing Fees that are revised during the Term shall apply to the development of the Project pursuant to this Agreement provided that (1) such revised fees apply uniformly to similar private projects or works within City, (2) the application of such fees to development of the Project is prospective only, unless otherwise agreed to by Developer, and (3) the application of such fees to development of the Project would not require an amendment of this Agreement, including, without limitation, any of the exhibits incorporated herein.

G. No New Development Impact Fees or Exactions. City expressly agrees that Developer and its successors-in-interest shall have no obligation to participate in, pay, contribute, or otherwise provide as a condition or exaction of any Subsequent Approval by City, any new impact fees imposed on development, however described or defined, that did not exist under the Existing City Laws and as shown on **Exhibit F**. This provision will not preclude increases or decreases to those development impact fees in existence under the Existing City Laws in accordance with the state Mitigation Fee Act, except as provided in **Exhibit F**. The City shall not modify or renegotiate the development impact fees applicable to the Project as a result of any amendment to this Agreement or the Planning Application unless such amendment materially increases the density or intensity of the Project. The Parties acknowledge that the provisions contained in this Article 4G, are intended to implement the intent of the Parties that Developer has the right to develop the Project pursuant to specified and known criteria and rules, and that City receives the benefits which will be conferred as result of such development without abridging the right of City to act in accordance with its powers, duties and obligations. In addition, except as provided herein, in any Subsequent Approvals, the City will not impose and the Developers will not be required to comply with and/or pay for any exactions other than as provided in or contemplated by this Agreement and the Existing Approvals.

H. Subdivision Maps.

1. Developer shall have the right, from time to time or at any time, to apply for one (1) or more Tentative Maps (“**Master Tentative Maps**”), subdividing the Property or portions of the Property into parcels corresponding to the “**Blocks**,” “**Streets**” and/or “**Open Spaces**” (all, as specified in the Planning Application), as may be necessary in order to develop, sell, lease or finance any portion of the Property in connection with development of the Project consistent with the density and parcel sizes set forth in the Planning Application. Multiple final maps may be filed for any Master Tentative Map pursuant to Government Code Section 66456.1.

2. Developer shall have the right to apply for a subsequent Tentative Map (“**Subsequent Tentative Map**”) prior to the time that the Master Tentative Map has been approved and prior to the time that the Final Subdivision Map based on the Master Tentative Map has been approved and filed for record. City may grant approval of a Master Tentative Map or of a Subsequent Tentative Map or Subsequent Tentative Maps with conditions as to the development of the parcel or parcels described on the Master Tentative Map or Subsequent Tentative Map. Conditions of approval of a Subsequent Tentative Map shall include that the conditions of the Master Tentative Map as to the parcel or parcels shown and described on the Subsequent Tentative Map have been fulfilled.

3. Each Master Tentative Map, Subsequent Tentative Map and Final Subdivision Map may be “for condominium purposes,” approving the portion of the Property described therein for a maximum number of condominium units. Any portion of the Property described on a Final Subdivision Map “for condominium purposes” may be divided into condominiums by a condominium plan in accordance with Civil Code Section 1351(e) and Government Code Section 66427. A Final Subdivision Map for a portion of the Property described in a Tentative Map may not be approved until the conditions of approval of the

Tentative Map applicable to the portion of the Property described in the Final Subdivision Map have been satisfied.

4. Pursuant to Government Code Section 65867.5(c), City has determined that this Agreement is not subject to the provisions of Government Code Section 66473.7 for the following two (2) independent reasons: (a) the Project is a residential project proposed for a site that is within an urbanized area and has been previously developed for urban uses; and (b) the immediate contiguous properties surrounding the Property are, and previously have been, developed for urban uses, all within the meaning of Government Code Section 66473.7(i). Therefore, the maps referenced in this Article 4F shall be exempt from the requirements of Government Code Section 66473.7 concerning water verifications.

5. Notwithstanding that the Project Approvals and this Agreement apply to the entire Property and run with the land, if and to the extent that the Property is subdivided into separate parcels and any such parcels are transferred, following the execution of an Assumption Agreement in connection with a Transferred Parcel (as defined in Article 11A below) the obligations of a Transferee (as defined in Article 11A below) shall be limited to those provisions of the Project Approvals and this Agreement only insofar as they apply to the parcel owned by such Transferee. Without limiting the generality of the foregoing, the owner of such Transferred Parcel shall not be chargeable with any omission, commission, default or delay under the Project Approvals regarding any other parcels making up the Property that it does not own. This provision to make the undertakings with respect to each parcel making up the Property severable is included in order to facilitate the separate ownership, financing and/or development of parcels making up the Property without concern for any non-compliance attributable to the acts of others.

I. Subsequent CEQA Review. The SEIR, which has been certified by City as being in compliance with CEQA, addresses the potential environmental impacts of the entire Project as it is described in the Project Approvals. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Approval for the Project, then the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Approval.

J. Processing During Third-Party Litigation. The filing of any third-party lawsuit(s) against City or Developer relating to this Agreement, the Project Approvals, any other development permits or approvals, or issues affecting the Project or the Property, shall not give cause to the City to delay or stop the development, processing or construction of the Project, or the exercise by the City of any of its Subsequent Discretionary Powers, unless such third party obtains a court order preventing the activity. City shall not stipulate to the issuance of any such order.

K. Cooperation in the Event of Third-Party Legal Challenge. City and Developer shall cooperate in the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, any Project Approvals or the underlying environmental review and documents. To the extent that Developer determines, in its sole discretion, to contest such litigation challenges, Developer shall reimburse City, within thirty (30) days following City's written demand therefor, which may be made from time to time during the course of such litigation, all costs incurred by City in connection with the litigation challenge, including City's administrative, legal and court costs, provided that City shall either: (a) elect to joint representation by Developer's counsel; or (b) retain an experienced litigation attorney, and require such attorney to (i) prepare and comply with a litigation budget that is mutually agreeable to City and Developer; and (ii) provide Developer with monthly written updates of incurred and anticipated legal expenses. If Developer elects, in its sole and absolute discretion, not to contest such litigation, City shall have no obligation to contest such challenges.



If the City elects to contest such challenges after Developer elects not to contest, the City shall do so at its sole cost.

## **ARTICLE 5 AMENDMENT OR CANCELLATION**

A. Amendments to Agreement (Developer and City). This Agreement may be amended, or cancelled in whole or in part, at any time and from time to time by mutual consent of the Parties in writing, in accordance with the provisions of Government Code Section 65868 upon notice of intention to amend or cancel in the form required by Government Code section 65867, and adoption of an ordinance amending or cancelling this Agreement; provided, however, that following the execution of an Assumption Agreement in connection with a Transferred Parcel (as defined in Article 11A below), this Agreement may be so amended or cancelled as it relates solely to such Transferred Parcel without the consent of the owners of any other parcels within the Property. Developer shall record an appropriate notice of any Amendment, cancellation or termination with the San Mateo County Recorder not later than ten (10) days after the effective date of the action effecting such amendment, cancellation or termination, accompanied by a legal description of the Property.

B. Superseding State or Federal Laws. As provided in Government Code section 65869.5, in the event that State or Federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement or require changes in the Project Approvals ("**Superseding State or Federal Laws**"): (1) such Superseding State or Federal Laws shall be treated as a Force Majeure pursuant to Article 10E below; and (2) this Agreement shall be suspended, or, with Developer's written consent, modified or its Term extended as necessary to comply with such Superseding State or Federal Laws. It is the intent of the Parties that any such modification or suspension be limited to that which is necessary, and to preserve to the extent possible the original intent of the Parties in entering into this Development Agreement Within two (2) months following the enactment of any such Superseding State or Federal Laws, Developer and the City shall meet and confer in good faith to determine the feasibility of any such modification, extension or suspension based on the effect such modification, extension or suspension would have on the purposes and intent of this Agreement and the cost to Developer of constructing and completing the Project; and if such modification, extension or suspension cannot be agreed upon, then Developer may terminate this Agreement on thirty (30) days' notice to City. In addition, Developer shall have the right to challenge such Superseding State or Federal Laws, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

## **ARTICLE 6 INDEMNIFICATION**

Developer agrees to defend, indemnify, release, and hold harmless the City, its elected and appointed officials, employees, and agents, from and against any litigation, claim, action, or court proceeding brought against any of the foregoing individuals or entities ("**Indemnified Parties**"), the purpose of which is to attack, set aside, void, or annul this Agreement, excepting suits and actions arising from the sole negligence or willful misconduct of City. This indemnification shall include, but not be limited to, damages, costs, expenses, attorney fees (including court-awarded attorney fees), or expert witness fees that may be asserted or incurred by Indemnified Parties, arising out of or in connection with the approval of this Agreement. If Developer is required to defend Indemnified Parties in connection with any litigation, claim, action, or court proceeding, the City shall retain the right to approve counsel retained by Developer as well as any and all settlements proposed by Developer, which approval shall not be unreasonably

withheld, conditioned, or delayed. Developer shall also have the right to approve any and all settlements of any such matters proposed by the City and relating to this Agreement, which approval shall not be unreasonably withheld, conditioned, or delayed. City agrees to cooperate with Developer in the defense of the claim, action, or proceeding. Nothing in this Article shall be construed to mean that Developer shall defend, indemnify, release, or hold harmless, the Indemnified Parties from any claims of personal injury, death, or property damage arising from, or alleged to arise from the maintenance or repair by the Indemnified Parties of improvements that have been offered for dedication and accepted by City, or for the Indemnified Parties' negligence or willful misconduct. This section shall sunset and have no further force or effect automatically and concurrently with the expiration of all applicable statutes of limitation for claims covered by this Article 6.

## **ARTICLE 7 MORTGAGEE PROTECTION AND ESTOPPEL CERTIFICATES**

### **A. Mortgagee Protection.**

1. Mortgagee Protection. This Agreement shall be superior and senior to any lien placed now or hereafter upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any such Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity that acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

2. Mortgagee Not Obligated. Notwithstanding anything in this Agreement to the contrary, no Mortgagee shall have any obligation or duty under this Agreement to proceed with the Project, and unless such Mortgagee elects to proceed with the Project it shall not be obligated to provide the Public Benefits, indemnify the Indemnified Parties under Article 6 above or pay any applicable Processing Fees or development impact fees. However, in the event that Mortgagee both (a) takes possession of the Property as a result of a foreclosure or deed in lieu of foreclosure and (b) gives notice to the City that Mortgagee elects to proceed with the Project ("Election to Proceed"), then Mortgagee shall assume all the obligations imposed on Developer in connection with undertaking the Project, including, without limitation, the provision of Public Benefits, the indemnification of the Indemnified Parties under Article 6 above, and the payment of all applicable Processing Fees and development impact fees. Failure by Mortgagee to give notice to the City of its Election to Proceed within thirty (30) days of Mortgagee's taking possession of the Property as a result of a foreclosure or deed in lieu of foreclosure shall constitute an Event of Default as described in Article 9A.1, in which case City shall retain the remedies against Developer set forth in Article 9A.3.

3. Notice of Default; Right to Cure. If City receives a written notice from a Mortgagee requesting a copy of any notice of default given to Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice of default or determination of noncompliance given to Developer. Each Mortgagee shall have the right (but not the obligation) for a period of ninety (90) days after the receipt of such notice from City to cure or remedy the default claimed or the areas of noncompliance set forth in City's notice. If such default or noncompliance is of a nature that it can only be cured or remedied by such Mortgagee upon obtaining possession of the Property, then such Mortgagee shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall within ninety (90) days after obtaining possession cure or remedy such default or noncompliance. If such default or noncompliance cannot with diligence

either be cured or remedied within such ninety-(90-) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to cure or remedy such default or noncompliance if such Mortgagee commences such cure or remedy during such ninety- (90-) day period and thereafter diligently pursues completion of such cure or remedy to the extent possible.

B. Estoppel Certificates. Either Developer or City may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the actual knowledge of the certifying party: (1) this Agreement is in full force and effect and a binding obligation of the Parties; (2) this Agreement has not been amended or modified either orally or in writing (or else identifying any such amendments or modifications); (3) the requesting party is not in default in the performance of its obligations under this Agreement (or else describing the nature and amount of any such defaults); and (4) any other factual matters reasonably pertaining to this Agreement, the Project and the Public Benefits as may be reasonably requested. A party receiving a request hereunder shall execute and return such certificate to the requesting party or its designee within ten (10) days following the receipt thereof. The certification of City may be executed on behalf of City by the City Planning Director. City acknowledges that a certificate hereunder may be relied upon by existing or prospective Mortgagees, existing or prospective tenants of the Property, and Transferees (as defined in Article 11A below). City acknowledges a certificate hereunder issued in connection with the proposed transfer of the Property shall be binding and conclusive with respect to whether there is any Default of the prior owner under this Agreement.

## ARTICLE 8 ANNUAL REVIEWS

A. Annual Reviews. Beginning on the Effective Date, at least once every 12 months during the Term, Developer shall contact the City and request the scheduling of a hearing before the Planning Commission in order to demonstrate that Developer has sufficiently followed the terms of this Agreement so as to carry out the intent of the Parties in entering into it (“**Good Faith Compliance**”). The City shall provide Developer with notice of such hearing and a copy of all staff reports and related exhibits as soon as available, but in no event later than five (5) business days prior to the hearing.

B. Notice of Default. If either of the Parties finds evidence of default by the other party during the course of any such review, it shall give written notice to the other party specifying the nature of the default and the manner in which it may be satisfactorily cured, and the Parties shall have the rights set forth in Article 9 below.

C. Planning Commission Determination Regarding Good Faith Compliance. If, as a result of any such review, the Planning Commission determines, on the basis of substantial evidence, that Developer is in Good Faith Compliance, such determination shall be subject to appeal in accordance with the procedures set forth in Municipal Code Section 27.08.090. Alternatively, if, as the result of any such review, the Planning Commission determines, on the basis of substantial evidence, that Developer is not in Good Faith Compliance, then the Planning Commission shall (1) specify on the record the respects in which Developer has failed to so comply with this Agreement, and (2) give notice to Developer of such determination and specification pursuant to Article 12 below, which notice shall serve as written notice by City to Developer of a default pursuant to Article 9A.1 below.

D. Planning Commission Determination Regarding a Health or Safety Danger. If, as a result of any such review, the Planning Commission determines, on the basis of substantial evidence, that, subject to Article 3B and Article 4 above, there exists a Health or Safety Danger, then the Planning



Commission shall (1) specify on the record the factual basis for finding such Health or Safety Danger, (2) give notice to Developer of such determination and specification pursuant to Article 12 below, and (3) make recommendations to the City Council regarding modifications to or termination of this Agreement.

E. Action by City Council. In the event that either (1) an Event of Default arises pursuant to Article 9A.1 below, or (2) the Planning Commission makes recommendations to the City Council regarding modifications to or termination of this Agreement pursuant to Section D above regarding a Health or Safety Danger, the City Council shall hold a public hearing to consider terminating or modifying this Agreement. Notice of such hearing shall be given as set forth in Article 6 of the Development Agreement Resolution. If the City Council determines, on the basis of substantial evidence, that Developer is not in Good Faith Compliance, or that a Health or Safety Danger exists, then the City Council may terminate or, with Developer's written consent and in accordance with Article 5A above, modify this Agreement. At such hearing City shall demonstrate on the record the grounds and basis on which it claims the right to terminate this Agreement, if any. Any challenge to the City's termination of this Agreement on account of a Health or Safety Danger shall be subject to review in the Superior Court of the County of San Mateo.

## **ARTICLE 9 DEFAULT; REMEDIES; TERMINATION**

### A. Events of Default and Remedies.

1. Events of Default. Subject to any extensions of time by mutual written consent of the Parties, and subject to the provisions of Article 8E above regarding Good Faith Compliance, and Article 9A.2 below regarding Force Majeure, any failure by either party to perform any material terms or provision of this Agreement (including any failure to comply in good faith with the terms of this Agreement) shall constitute an event of default (an "**Event of Default**"): (a) if such defaulting party does not cure such failure within sixty (60) days after receiving written notice of default from the other party, where such failure is of a nature that can be cured within such sixty- (60-) day period; or (b) if such failure is not of a nature that can be cured within such sixty- (60-) day period, the defaulting party does not within such sixty- (60-) day period commence substantial efforts to cure such failure, or thereafter does not prosecute to completion with diligence and continuity the curing of such failure.

2. Enforced Delay Extension of Time of Performance. No party shall be deemed to be in default or noncompliance under this Agreement, or suffer a termination of this Agreement (or any rights hereunder), where the alleged default, noncompliance, or terminating event or delay is due to any Force Majeure, as described in Article 10E hereof. If written notice of any such default, noncompliance, or terminating event or delay is given to either party within thirty (30) days after the commencement thereof, an extension of time for such cause will be granted for the period of the enforced default, noncompliance, or terminating event or delay, or longer if the Parties mutually agree.

3. Remedies. If an Event of Default occurs, the nondefaulting party may not exercise any rights or remedies unless and until it has first requested in writing that the Parties schedule a meeting to occur before a neutral mediator to attempt to mediate and resolve the dispute. Within ten (10) days after expiration of the sixty- (60-) day cure period provided in Article 9A.1 above, the nondefaulting party shall submit: (a) a list of three neutral mediators, each of whom must have at least five (5) years experience with performance under development agreements made and entered into in the State of California pursuant to the Development Agreement Statutes; (b) and dates the mediators are available at the time it requests the meeting. Within ten (10) days of receiving such list, the defaulting party shall select one neutral

mediator from the list provided. If the dispute is not resolved within sixty (60) days after the nondefaulting party has requested a meeting, and the nondefaulting party has provided at least three (3) available business days for such a meeting at which its own representative and the neutral mediator are available at a location within the City of San Mateo, regardless of whether the Parties have actually met to mediate the dispute, the nondefaulting party shall have the right to (a) bring any proceeding in the nature of specific performance, injunctive relief, declaratory relief or mandamus, and/or (b) bring any action at law or in equity to compensate the nondefaulting party for all the detriment proximately caused by the defaulting party's Event of Default; provided, however, that (x) Developer's sole remedy shall be specific performance and Developer shall not have the right to recover monetary damages (compensatory, consequential or punitive) against City other than attorneys' fees to the extent provided in Article 10I below, and (y) City's sole remedies, other than attorneys' fees to the extent provided in Article 10I below, shall be specific performance of Developer's obligation to provide the Public Benefits as specified herein or the right to receive and retain the Public Benefits in the total dollar amount of the "Supplemental Transportation Fee Payment" set forth in **Exhibit B** of this Agreement (subject to permitted annual adjustments) and specified in Article 3B.1(h) as liquidated and agreed upon monetary damages. In addition, the non-defaulting party shall have the right to terminate this Agreement in accordance with the procedures set forth in Article 9B below, but any such termination shall not affect such party's right to seek any remedy permitted by this Agreement on account of the Event of Default for which this Agreement has been terminated.

B. Termination. If either party determines that it has the right pursuant to Article 9A.3 above to terminate this Agreement as it relates to all or a portion of the Property or Project and elects to exercise that right, then it shall give written notice thereof to the other party pursuant to Article 12 below. If City is the party that delivers any such termination notice, the City Council shall hold a public hearing to consider terminating this Agreement. Notice of such hearing shall be given as set forth in Section 6 of the Development Agreement Resolution. At such hearing City shall demonstrate on the record the grounds and basis on which it claims the right to terminate this Agreement. Upon conclusion of such public hearing, the City Council shall direct the City Manager of the City or his or her designee (the "**City Manager**") to take whatever action the City Council deems necessary or appropriate in connection with City's termination notice, including terminating this Agreement. If Developer is the party that delivers any such termination notice, then this Agreement shall automatically terminate upon such delivery. The provisions of this Article 9B, shall not be construed so as to place additional noticing requirements upon the termination of this Agreement pursuant to Article 8D above, or Developer's freeing itself from further obligations pursuant to Article 11B below.

C. Judicial Proceeding to Challenge Termination. Any challenge to a party's termination of this Agreement on account of an Event of Default by the other party shall be subject to review in the Superior Court of the County of San Mateo.

D. 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 another Party, except as otherwise expressly provided herein.

E. No Cross-Default. Notwithstanding anything in this Agreement to the contrary, following the execution of an Assumption Agreement in connection with a Transferred Parcel (as defined in Article 11A below), the owner of such Transferred Parcel shall not be chargeable with any other parcel owner's non-compliance with the Project Approvals or this Agreement, and City shall have no recourse under this Article 9 or otherwise against any such non-defaulting owner and no right under this Article 9 to terminate

or modify this Agreement as it relates to any parcel of the Property, and any portion of the Project thereon, owned by any such non-defaulting developer. This provision to make the undertakings with respect to each parcel making up the Property severable is included in order to facilitate the separate ownership, financing and/or development of portions of the Property without concern for any so-called cross-default attributable to the acts of others.

## **ARTICLE 10 MISCELLANEOUS**

A. Enforceability. Except as otherwise provided herein, the rights of the Parties under this Agreement shall be enforceable notwithstanding any change subsequent to the Execution Date in any applicable City Laws.

B. Default by Developer; Withholding of Building Permits. City may, at its discretion, refuse to issue a building permit for any Project-related structure within the geographical confines of the Property as the same is defined at the time of said application, if Developer has failed and refuses to complete any material requirement enumerated therefor in accordance with the terms of this Agreement. No building permit shall be issued or building permit application accepted for the building shell of any structure on the Property if the permit applicant owns or controls any property subject to this Agreement, and if such applicant or any entity or person controlling such applicant is in default of the terms and conditions of this Agreement as determined pursuant to Article 8 or Article 9 above; provided, however, that following the execution of an Assumption Agreement in connection with a Transferred Parcel (as defined in Article 11A below), the owner of such Transferred Parcel shall not be chargeable with any other parcel owner's non-compliance with the Project Approvals or this Agreement, and the City shall have no recourse under this Section B against such non-defaulting Transferee by delaying or refusing to accept, process or approve a building permit application for such Transferred Parcel. This provision to make the undertakings with respect to each parcel making up the Property severable is included in order to facilitate the separate ownership, financing and/or development of portions of the Property without concern for any so-called cross-default attributable to the acts of others.

C. Covenants Run with the Land. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property. The burdens and benefits hereof shall bind and inure to the benefit of all successors in interest and permitted assigns to the Parties hereto.

D. No Waiver. No failure, delay or omission by a party in exercising or asserting any right, power or remedy hereunder shall impair such right, power or remedy, and no failure, delay or omission by a party occurring upon the other party's noncompliance with or failure to perform the terms and conditions of this Agreement shall be construed as a waiver thereof. A waiver by either party of any failure on the part of the other party to perform any of the terms or conditions to be performed by such other party shall not be construed as a waiver of any succeeding failure of the same or other terms or conditions hereof, nor shall any failure, delay or omission by a party in asserting any of its rights or remedies hereunder deprive such party of its right to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies.

E. Force Majeure. In the event any party to this Agreement is unable to perform or fulfill any of the terms or conditions of this Agreement on account of acts of God, enemy action, terrorism, war, insurrection, strikes, labor disputes, unavailability of labor or materials, walk-outs, riots, governmental actions or restrictions (including, without limitation, Superseding State or Federal Laws), administrative appeals or legal challenges to this Agreement, the Project Approvals, or any other approval required for

the Project or any initiatives or referenda regarding the same, moratorium, judicial orders, third-party actions, floods, earthquakes, fires, casualties, unusually inclement weather of a magnitude in excess of seasonally anticipated conditions for the subject climate and time of year, any act or omission caused by the other party, acts or failures to act of any public or governmental agency or entity (except that acts or failures to act of City shall not excuse performance by City), epidemics; quarantine restrictions; freight embargoes; environmental conditions, pre-existing or discovered, delaying the construction or development of the Property or any portion thereof ("**Force Majeure**"), the party obligated to so perform or prevented from performing thereby shall be excused from said performance until such time as said party shall no longer be prevented from performing on account of any such Force Majeure, and the Term shall be extended automatically for a period of time equal to that of such Force Majeure. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer.

F. **No Joint Venture or Partnership.** Nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint venturers or partners, or render either party liable for any obligations of the other.

G. **Applicable Law and Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of California. In the event of litigation, venue will be in the County of San Mateo or the US District Court, Northern California District.

H. **Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

I. **Attorneys' Fees.** Should any legal action be brought by any party because of breach of this Agreement or to enforce any provision of this Agreement, each party shall bear their own attorney's fees and such other costs as may be incurred: The prevailing party in any action or actions to enforce the provisions of this Agreement shall be limited to recovering attorney's fees as deemed reasonable by a court or arbiter of competent jurisdiction.

J. **Recordation of Termination.** Upon expiration or termination of this Agreement, a written statement acknowledging such expiration or termination shall be recorded by City in the Official Records of San Mateo County, California.

K. **Counterparts; Entire Agreement.** This Agreement may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same agreement. This Agreement constitutes the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter hereof.

L. **Incorporation of Recitals and Exhibits.** Each of the following exhibits attached hereto, as well as the recitals set forth above, are incorporated herein by this reference and made a part hereof for all purposes:

Exhibit A      Property Description

Exhibit B      Timing of Supplemental Transportation Fee Payment Contributions

Exhibit C      Site Plan for Public Benefit Facilities

Exhibit D	Pedestrian and Bike Improvements
Exhibit E	Potential Off-site Locations for Use of Transportation Contributions
Exhibit F	Impact Fees
Exhibit G	Form of Assumption Agreement

## ARTICLE 11 ASSIGNMENT AND TRANSFER

A. Assignment and Transfer. At any time during the Term, Developer and its successors-in-interest shall have the right to sell, assign or transfer all or a portion of its rights, title and interests in the Property and/or this Agreement (a “**Transfer**”) to any person or entity (a “**Transferee**”). The Parties acknowledge that transfer of any portion of the Property that is less than the entire Property would require subdivision approval by the City, and such portion so transferred constitutes a “**Transferred Parcel**.” Except in regard to Transfers to Pre-Approved Transferees (which does not require any consent by the City as provided in Section B below), prior to consummating any Transfer, Developer shall obtain from the City Manager written consent to the Transfer, which consent shall not be unreasonably withheld, delayed or conditioned. The City Manager shall respond in writing to Developer’s written request for any such written consent within ten (10) business days after the City’s receipt thereof in accordance with Article 12 below. Developer’s written request shall provide reasonably sufficient detail and any non-confidential, non-proprietary supporting evidence necessary for the City Manager to consider and respond to Developer’s request. Any failure by the City Manager to respond within the ten- (10) business day period, as well as any decision by the City Manager to withhold, delay or condition consent to any Transfer, shall be promptly reviewed by the City Council in accordance with the appeal provisions set forth in San Mateo Municipal Code section 27.08.090.

B. Pre-Approved Transferees. Notwithstanding anything in this Agreement to the contrary, the following Transferees constitute “**Pre-Approved Transferees**,” for which no City consent shall be required:

1. An entity owned or controlled by Developer or Brian Myers.
2. Any Transferee that certifies that either: (a) The Transferee or its affiliates (i) have the financial resources necessary to develop or complete development of the Transferred Parcel, in accordance with the terms and conditions of this Agreement and the Conditions of Approval, (ii) have experience and expertise in developing projects similar in size and scope to that portion of the Project planned to occur at the Transferred Parcel, and (iii) are not involved in litigation with the City relating to any other development project; or (b) it is acquiring the Transferred Parcel for the purpose of occupying a majority of the rentable area thereof upon completion for its own use or the use of its affiliates;
3. A Mortgagee or any designee of a Mortgagee; and
4. Any financial institution or other lender from which any Developer has borrowed funds for use in constructing the improvements contemplated in this Agreement or otherwise developing the Property.

C. Assumption and Release. Without the requirement of any public hearing, Developer or its successors-in-interest may free themselves from their obligations relating to the Property or to a



Transferred Parcel, provided that the Transferee expressly assumes such obligations and agrees to be bound by the other terms and conditions respecting the Property or such Transferred Parcel under this Agreement, by way of an assignment and assumption agreement (an “**Assumption Agreement**”), materially in the form of **Exhibit G** attached hereto (or such other written agreement reasonably acceptable to the City), executed by and between the City, Developer and such Transferee. Developer and City acknowledge and agree that the rights and obligations under this Agreement may be assigned and assumed by Transferees that either: (i) acquire fee title to the Property or Transferred Parcels (“**Fee-Assignee**”), or (ii) enter into a ground lease or similar instrument with Developer with respect to the Property or Transferred Parcels (“**Lessee-Assignee**”). With respect to a Transfer of a Transferred Parcel, to the extent that Developer’s obligations under this Agreement are not clearly allocated or attributed to such Transferred Parcel, such allocation or attribution shall be made in the Assumption Agreement. City agrees to assist the assignor and assignee (including attendance at meetings), at assignor's expense, in determining how each obligation and right set forth in this Agreement and the other Project Approvals can be described and allocated in the assignment and assumption agreement so as to avoid confusion later regarding what obligations and rights have and have not been assigned. Upon delivery by Developer to City of any proposed Assumption Agreement, City staff shall review the Assumption Agreement and determine, within thirty (30) business days, whether the rights and obligations have been properly allocated between the assignor and assignee. Upon City staff’s determination that the rights and obligations have been properly allocated, the City shall consider the Assumption Agreement on the next available consent calendar. Within seven (7) days after approval by the City Council of any Assumption Agreement, City Manager or its designee shall execute and return such Assumption Agreement to Developer. Upon the full execution of an Assumption Agreement with a Fee-Assignee, such Fee-Assignee shall thenceforth be deemed to be the “Developer” hereunder with respect to the Property or the Transferred Parcel; and upon execution, (i) any default by such Fee Assignee of any rights, duties, obligations or interests so assigned and assumed by the Transferee shall not thereby constitute a default or breach by the assignor with respect to the rights, duties, obligations or interests not assigned and (ii) any default by the assignor of any rights, duties, obligations or interests not so assigned shall not thereby constitute a default or breach by the Fee Assignee with respect to the rights, duties, obligations or interests so assigned and assumed. Upon the full execution of an Assumption Agreement with a Lessee-Assignee, such Lessee-Assignee shall thenceforth be deemed to be the “Developer” hereunder with respect to the Property or the Transferred Parcel, provided, however, that any default by such Lessee-Assignee of any material obligation assigned under the Assumption Agreement shall remain an obligation of the assignor, as guarantor, and subject to the assignor’s reasonable opportunity to cure. Under no circumstance shall a default of a Lessee-Assignee constitute a default or breach by assignor with respect to the rights, duties, obligations or interests not assigned under the Assumption Agreement. The Assumption Agreement shall be recorded on the portion of the Property to which the assignment applies.

D. Successive Assignment. In the event there is more than one Assignment under the provisions of this Article 11 the provisions of this Article 11 shall apply to each successive Assignment and Assignee.

## **ARTICLE 12**

### **NOTICES**

Any notice or communication hereunder must be in writing and may be given either by personal service or by registered or certified mail, postage prepaid. Any notice or communication personally served shall be deemed given and received on the date of personal service (evidenced by signed receipt) on the party noticed at the appropriate address designated below, and any notice or communication sent by registered or certified mail, return receipt requested, properly addressed to the appropriate address designated below,

with postage prepaid, shall be deemed given and received on the date of receipt, as evidenced by the return receipt card. Any party hereto may at any time and from time to time, in the manner provided herein, designate any other address in substitution of the address to which such notice or communication shall be given. All such notices or communications shall be given to the Parties to their addresses hereinafter set forth:

IF TO CITY:

City Clerk, City of San Mateo  
City Hall  
330 West 20<sup>th</sup> Avenue  
San Mateo, CA 94403  
ATTN: Director of Community Development

WITH A COPY TO:

City Attorney  
330 West 20<sup>th</sup> Avenue  
San Mateo, CA 94403  
ATTN: City Attorney

IF TO DEVELOPER:

Concar Development Partners, LLC  
c/o California Coastal Properties, LLC  
4 Embarcadero, Suite 1400  
San Francisco, CA 94111  
ATTN: Brian J. Myers

WITH A COPY TO:

Holland & Knight, LLP  
50 California Street, Suite 2800  
San Francisco, CA 94111  
ATTN: Chelsea Maclean

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, this Agreement was executed by the Parties thereto on the dates set forth below:

*[SIGNATURES MUST BE NOTARIZED FOR RECORDED DOCUMENT]*

CITY OF SAN MATEO:

DEVELOPER:

---

Drew Corbett  
City Manager

City of San Mateo

---

Name:  
Title:

Concar Development Partners, LLC  
a Delaware limited liability company,  
By: California Coastal Properties, LLC  
Its Developer-Member

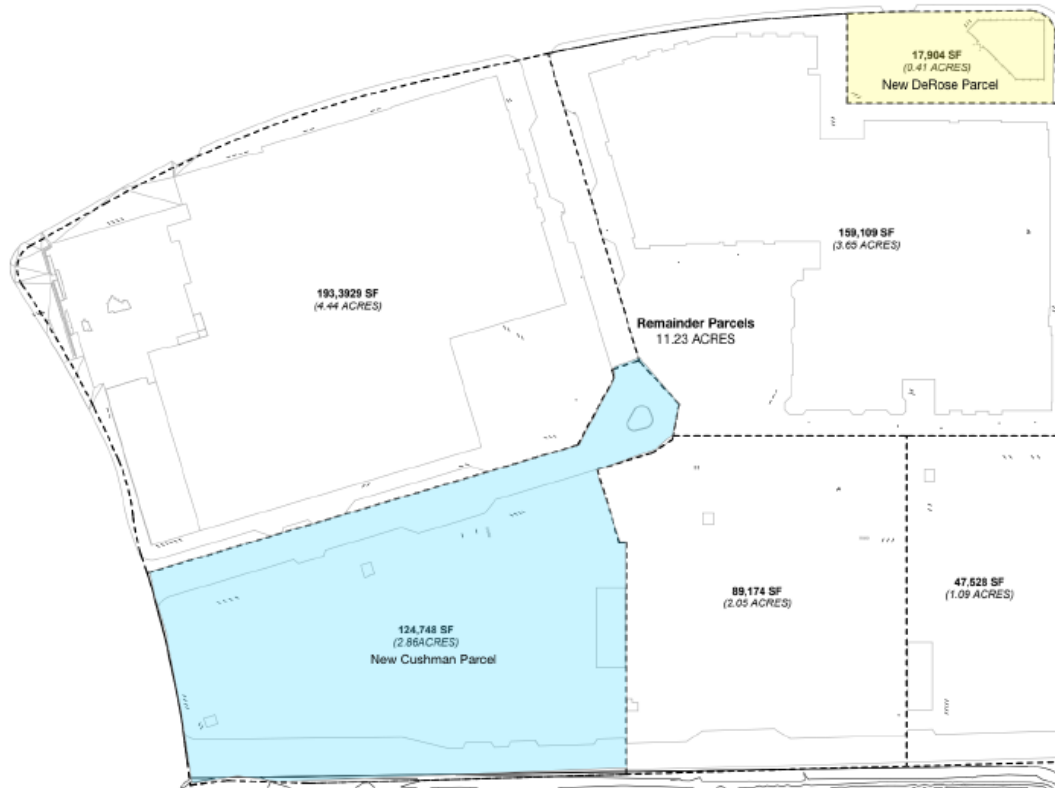


# EXHIBIT A

## PROPERTY DESCRIPTION

[FINAL LEGAL DESCRIPTIONS TO BE INSERTED PRIOR TO EXECUTION]

### AFTER PARCEL MAP RECORDINGS



PASSAGE AT SAN MATEO

PASSAGE  
San Mateo, California

PARCEL LINE DISTINCTION

A0-1.01

MVE

## EXHIBIT B

### TIMING OF SUPPLEMENTAL TRANSPORTATION FEE PAYMENT CONTRIBUTIONS

<i>Phase</i>	<i>Amount<sup>1</sup></i>	<i>Timing</i>
Improvement Planning <sup>2</sup>	\$750,000	At recordation of first Final Map.
Phase 1 (first 458 units)	\$3,250,000	Issuance of first Building Permit or functional equivalent (e.g., grading permit) for Phase 1
Phase 2 (next 229 units)	1,600,000	Issuance of first Building Permit or functional equivalent (e.g., grading permit) for Phase 2
Phase 3 (final 274 units)	1,900,000	Issuance of first Building Permit or functional equivalent (e.g., grading permit) for Phase 3

---

<sup>1</sup> The amounts reflected herein are based on construction costs as of the Effective Date, and shall be subject to annual adjustments consistent with the Engineering News-Record (ENR) Construction Cost Index for the San Francisco Bay Area.

<sup>2</sup> City may use Improvement Planning funds to fund improvements in City's discretion (e.g., design soft costs or improvements costs). Further, in the event that the City secures separate funding for design soft costs in advance of the Developer's first payment, the City may later use the Developer's first payment to reimburse the City's earlier expenditure for design soft costs.

# EXHIBIT C

## SITE PLAN FOR PUBLIC BENEFIT FACILITIES



 GRAPHIC DEPICTION OF LOCATION OF PUBLIC BENEFIT FACILITIES



PASSAGE  
AT SAN MATEO

PASSAGE  
San Mateo, California

ILLUSTRATIVE SITE PLAN

.GEN-0.02

PROJECT NUMBER

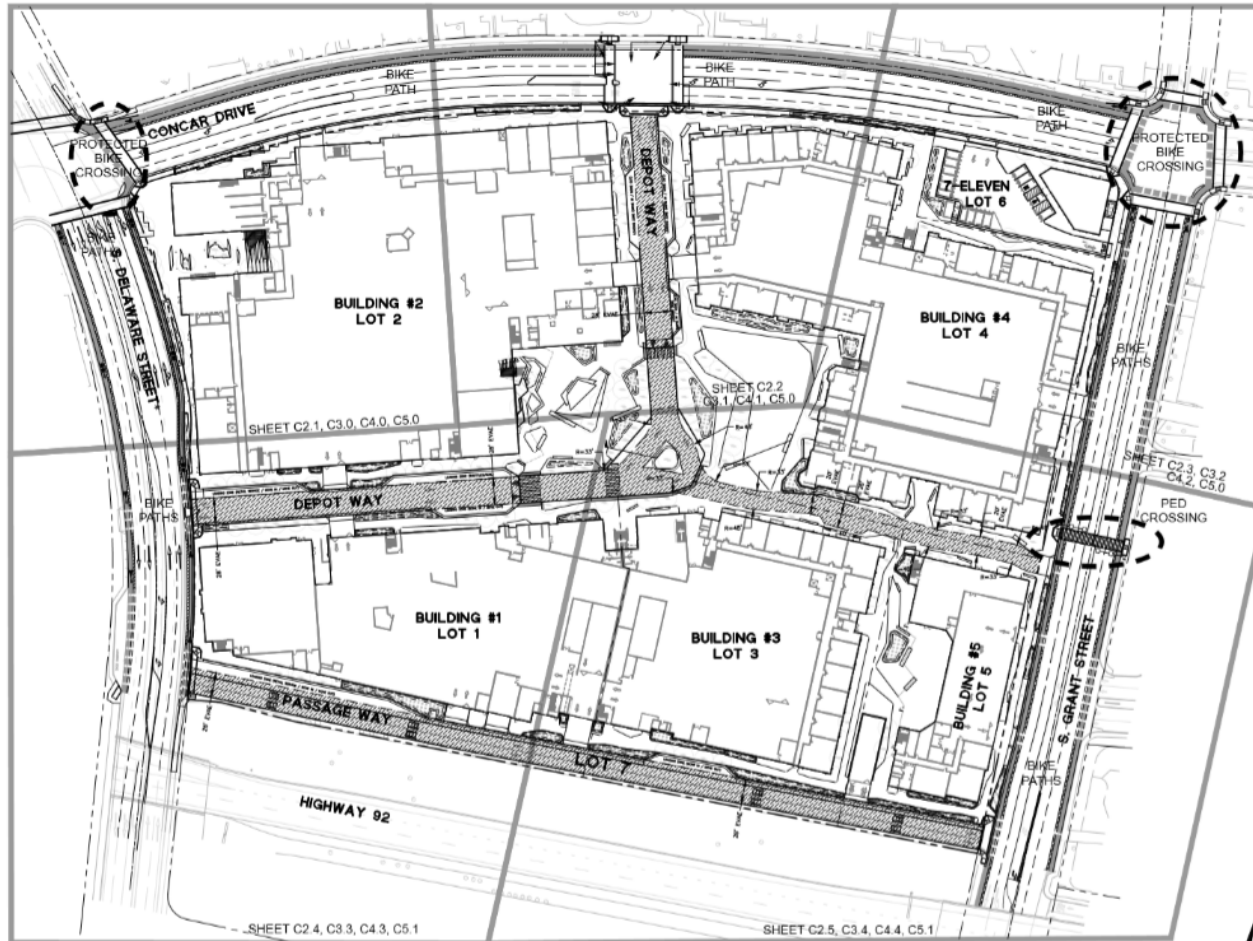
15-0179

MVE  
PARTNERS

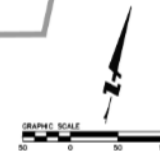
SPAR SUBMITTAL - OCTOBER 7, 2019

**EXHIBIT D**

**PEDESTRIAN AND BIKE IMPROVEMENTS**



 GRAPHIC DEPICTION OF LOCATION OF PUBLIC BENEFIT FACILITIES -  
BIKE AND PEDESTRIAN IMPROVEMENTS



**EXHIBIT E**

**POTENTIAL OFF-SITE LOCATIONS FOR USE OF**

**TRANSPORTATION CONTRIBUTIONS**



Concar Passage Development Agreement  
Improvements Boundary

## EXHIBIT F

### IMPACT FEES

1. WWTP Phase II Expansion Fee. Developer shall pay fee in effect at time when due as provided in the Project Approvals.
2. Transportation Impact Fees. Developer shall pay fee in effect at time when due as provided in the Project Approvals; notwithstanding the foregoing, Developer shall receive a credit for the Supplemental Transportation Fee Payment made pursuant to this Agreement as identified in Article 3.A.1.h in the event that the (i) City increases the Transportation impact fees in an amount more than the annual increase in accordance with the Engineering News-Record (ENR) Construction Cost Index for the San Francisco Bay Area and (ii) the increase in the City's Transportation Impact Fee funds improvements already funded by the Supplement Transportation Fee payment.
3. South Trunk Area Sewer Improvement Fee. Developer shall pay fee in effect at time when due as provided in the Project Approvals.
4. Central Parking Improvement District Per Space In-Lieu Fee. This fee is not applicable to the Project.
5. Art in Public Place Fee. Developer shall provide on-site in lieu improvements based on the fee in effect at time when due as provided in the Project Approvals.
6. Park and Landscape Resources. Developer shall pay fee in effect at time when due as provided in the Project Approvals. Developer may also request a park fee credit pursuant to San Mateo Municipal Code 26.64.030 [Private Park and Recreational Facility Space Credit].
7. Child Care Development Fee. The Parties agree that the estimated construction costs of the on-site child care facility as described in the Planning Application are approximately Four Million Dollars (\$4,000,000). Therefore, in exchange for provision of an on-site child care facility as described in the Planning Application for the life of the Project, Developer will receive a full credit against the applicable child care development impact fee.
8. Commercial Linkage Fee. Developer shall pay fee, if any is due, in effect at time when due as provided in the Project Approvals.
9. Below Market Rate Fee. Based on the provision of affordable housing fees, the Developer shall not be subject to a Below Market Rate Fee. Further, it is acknowledged that at the time the City Council adopted Resolution No. 14 on February 3, 2020, the Resolution provided that "a development that has submitted a Planning Application or a Planning Pre-application will be exempt from these requirements unless the project changes significantly in the future, which is defined as an increase in number of units or square footage of 20% or more." As the Developer had already submitted a Planning Application on September 18, 2018, the Project is therefore subject to the prior requirement that a developer of rental projects must provide 10% of the units affordable to Very Low-Income households or 15% affordable to Low-Income households, and for ownership projects provide 10% of the units to Low-Income households or 15% affordable to Moderate Income households.

## EXHIBIT G

### FORM OF ASSUMPTION AGREEMENT

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

City of San Mateo  
330 West 20th Avenue  
San Mateo, CA 94403  
Attention: City Manager

*Space Above This Line Reserved for Recorder's Use  
Exempt from Recording Fee Per Government Code Section 27383*

### ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this “**Assignment**”) is entered into as of \_\_\_\_\_, by and between **CALIFORNIA COASTAL PROPERTIES, LLC**, a Delaware limited liability company (“**Developer**”), \_\_\_\_\_, a \_\_\_\_\_ (“**Assignee**”) and the CITY OF SAN MATEO, a political subdivision of the State of California (“**City**”).

#### RECITALS

A. City and Developer entered into that certain Development Agreement dated as of \_\_\_\_\_, 2020, and recorded on \_\_\_\_\_ as Instrument No. \_\_\_\_\_ in the Official Records of San Mateo County (the “**Development Agreement**”) with respect to the development of the “**Project**” (as defined in the Development Agreement) on certain real property located in the City, as more particularly described in Exhibit A attached hereto (the “**Property**”).

B. Pursuant to, and subject to the terms and conditions set forth in, that certain [Purchase and Sale Agreement or Ground Lease] dated as of \_\_\_\_\_ by and between Developer and Assignee (the “**Purchase Agreement**”) [or (the “**Ground Lease**”)], Developer shall (i) convey a legal and equitable property interest in [IN THE CASE OF THE ENTIRE PROPERTY -- the Property] [IN THE CASE OF A PORTION OF THE PROPERTY -- that portion of the Property described in Exhibit B attached hereto (the “**Transferred Parcel**”)] to Assignee and (ii) assign and transfer certain of its rights and obligations as “Developer” under the Development Agreement and the other Project entitlements, approvals, and conditions of approval described therein (together with the Development Agreement, the “**Project Approvals**”) to Assignee to the extent described in the Purchase Agreement.

C. Pursuant to this Assignment, Developer intends to assign and transfer, and Assignee intends to assume, such rights and obligations of Developer to the extent described herein.

D. Pursuant to Article 11 of the Development Agreement, City has the right to reasonably consent to certain assignments and transfers of Developer’s rights and obligations under the Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and the foregoing recitals, which are incorporated herein by reference and made a part of this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

[1. ADD IF CITY CONSENT TO TRANSFER IS REQUIRED UNDER DA — City Consent to Transfer. Subject to Assignee acquiring fee title to, or entering into a ground lease or similar instrument with respect to, the {Property} {Transferred Parcel} pursuant to the [Purchase Agreement or Ground Lease], City hereby consents to Developer assigning and transferring the Transferred Rights and Obligations (as defined in Section 2 below) to Assignee.]

[1. ADD IF CITY CONSENT TO TRANSFER IS NOT REQUIRED UNDER DA (USE FOR PRE-APPROVED TRANSFEREES) — City Acknowledgment of Pre-Approved Transferee. Subject to Assignee acquiring fee title to, or entering into a ground lease or similar instrument with respect to, the {Property} {Transferred Parcel} pursuant to the [Purchase Agreement or Ground Lease], City hereby acknowledges that Developer's assignment and transfer of the Transferred Rights and Obligations (as defined in Section 2 below) to Assignee constitutes a Transfer to a Pre-Approved Transferee (as those terms are defined in the Development Agreement) for which no City consent is required under the Development Agreement.]

2. Assignment and Assumption. Subject to Assignee acquiring fee title to, or entering into a ground lease or similar instrument with respect to, the [Property] [Transferred Parcel] pursuant to the [Purchase Agreement or Ground Lease], (i) Developer hereby assigns its rights and obligations under the Development Agreement to Assignee pertaining to the [Property] [Transferred Parcel], as more fully described in Exhibit C attached hereto (the "Transferred Rights and Obligations"), and (ii) Assignee hereby assumes the Transferred Rights and Obligations and agrees to be bound by the terms and conditions of the Development Agreement with respect to the [Property] [Transferred Parcel].

3. Release. City and Assignee each acknowledge and agree that subject to Assignee acquiring fee title to the [Property] [Transferred Parcel] pursuant to the [Purchase Agreement], Developer is hereby released from and is no longer obligated to perform or fulfill the Transferred Rights and Obligations.

4. Effectiveness; Recording. Each party hereto acknowledges and agrees that (i) Developer's assignment and transfer, (ii) Assignee's assumption and release, and (iii) City's [consent and] release, each as contemplated by this Assignment, are contingent upon Assignee acquiring fee title to, or entering into a ground lease or similar instrument with respect to, the [Property] [Transferred Parcel] pursuant to the [Purchase Agreement or Ground Lease], and that if such conveyance does not occur, this Assignment shall not be recorded and shall be of no further force or effect. Concurrently with the close of escrow for such acquisition or at any time thereafter, any of the parties hereto shall have the right to instruct [INSERT ESCROW HOLDER'S NAME AND ADDRESS] ("Escrow Holder"), the escrow holder under the Purchase Agreement, to record this Assignment in the Official Records of San Mateo County. If so delivered, Escrow Holder shall record this Assignment.

5. Estoppel. City hereby confirms that, to its actual knowledge, (i) the Development Agreement is in full force and effect and a binding obligation of the parties thereto, (ii) the Development Agreement has not been amended or modified either orally or in writing, and (iii) Developer is not in default in the performance of its obligations under the Development Agreement.



6. Covenants Running with the Land. The provisions of this Assignment shall constitute covenants which shall run with the land comprising the [Property] [Transferred Parcel], and the burdens and benefits hereof shall extend to, bind and inure to the benefit of each party hereto and to all successors-in-interests and assigns to the parties hereto.

7. Severability. If any term, provision, covenant or condition of this Assignment is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms, provisions, covenants and conditions of this Assignment shall continue in full force and effect.

8. Amendments. No amendment, supplement or other modification to this Assignment shall be effective or enforceable against the parties hereto unless such amendment, supplement or other modification is in writing and executed by all of the parties hereto.

9. Applicable Law and Venue. This Assignment shall be construed and enforced in accordance with the laws of the State of California. In the event of litigation, venue will be in the County of San Mateo.

10. Counterparts; Headings; Defined Terms. This Assignment may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one Assignment. The headings to sections of this Assignment are for reference only and shall not be used in interpreting this Assignment. Unless otherwise defined herein, all capitalized terms in this Assignment shall have the meanings assigned to them in the Development Agreement.

11. Waiver. No waiver by any of the parties hereto of any of the terms or conditions of this Assignment or any of their rights under this Assignment shall be effective unless such waiver is in writing and signed by the waiving party.

12. Further Assurances. Each party hereto agrees, upon the reasonable request of another party hereto, to perform any further acts and to execute and deliver such further documents which may be reasonably necessary to carry out the terms of this Assignment.

List of Exhibits:

Exhibit A      Legal Description of the Property

[Exhibit B      Legal Description of the Transferred Property]

Exhibit C      Transferred Rights and Obligations

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first above written,

**DEVELOPER:**

California Coastal Properties, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY:**

CITY OF SAN MATEO, a political subdivision of  
the State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Shawn Mason, City Attorney

**ATTEST:**

\_\_\_\_\_  
City Clerk

## CONSENT, JOINDER AND SUBORDINATION OF LENDER

The undersigned, \_\_\_\_\_, a California chartered bank ("**Lender**"), is the owner and holder of that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement dated \_\_\_\_\_, 20\_\_\_\_, which is recorded in the Recorder's Office of the County of \_\_\_\_\_, California, as Instrument No. \_\_\_\_\_ - \_\_\_\_\_ (the "**Deed of Trust**").

Lender, as the owner and holder of the Deed of Trust, hereby joins in, consents to, and subordinates the Deed of Trust to the Development Agreement by and between The City of San Mateo and California Coastal Properties, LLC, relative to the development known as the Concar Passages Mixed-Use Project (the "**Development Agreement**") to which this Consent, Joinder and Subordination of Lender is attached. Lender agrees that all of its right, title, interest and estate in and to the real property and any improvements thereon described in the Deed of Trust shall be and is hereby bound by, subject to and subordinate to all of the terms and provisions of the Development Agreement, and the Development Agreement (and all of the terms and provisions thereof) shall fully survive any foreclosure, deed in lieu of foreclosure and/or any exercise by Lender of any right or remedy under or pursuant to the Deed of Trust.

### **LENDER:**

,  
a \_\_\_\_\_ chartered bank

\_\_\_\_\_  
Name, Title

*[SIGNATURES MUST BE NOTARIZED FOR RECORDED DOCUMENT]*