

ORDINANCE NO 2027

AN ORDINANCE OF THE CITY OF BURLINGAME ADOPTING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF BURLINGAME AND DW BURLINGAME I OWNER LLC, DW BURLINGAME II OWNER LLC, BURLINGAME II OWNER A LLC, BURLINGAME II OWNER B LLC, AND DW BURLINGAME III OWNER LLC, RELATED TO THE DEVELOPMENT PROJECT AT 1200-1340 OLD BAYSHORE HIGHWAY

WHEREAS, on March 24, 2022 DW Burlingame I Owner LLC, DW Burlingame II Owner LLC, DW Burlingame II Owner A LLC, DW Burlingame II Owner B LLC, and DW Burlingame III Owner LLC (collectively, “Developer”) filed an application with the City of Burlingame Community Development Department – Planning Division requesting approval of a development project located at 1200-1340 Old Bayshore Highway and consisting generally of three, 11-story office/research & development buildings and two, 10-10.5-story parking structures, which applications included requests for Environmental Review (and associated Water Supply Assessment), Commercial Design Review, Special Permits for Building Heights and Development under Tier 3/Community Benefits, and a Vesting Tentative Map (collectively, the “Final EIR” and the “Project Approvals”); and

WHEREAS, on January 17, 2023, the Developer submitted an application for a Development Agreement per Municipal Code Chapter 25.104 and California Government Code section 65864 *et seq.* (the “Development Agreement Statute”) which authorizes a city and a party having a legal or equitable interest in real property to enter into a voluntary binding, long-term development agreement, which among other things can establish certain development rights in property and provide certain benefits for the public; and

WHEREAS, on February 13, 2023, in conjunction with the Design Review Study meeting, the Planning Commission held a pre-application study session on the Development Agreement application pursuant to Burlingame Municipal Code Section 25.104.040; and

WHEREAS, City staff and Developer have negotiated proposed terms for a development agreement for the 1200-1340 Old Bayshore Highway Project (the “Development Agreement”), attached hereto as Attachment 1; and

WHEREAS, the Development Agreement, among other things, sets forth the effective date and term of the agreement; applicable fees; applicable rules, regulations and policies; required infrastructure improvements; provisions governing amendments, annual review, and default; and other miscellaneous provisions; and

WHEREAS, on March 11, 2024, and as required by the Development Agreement Statute and the Burlingame Municipal Code, the Planning Commission conducted a duly noticed public hearing to consider the Final EIR and the Project Approvals and the Development Agreement and recommended that the City Council certify the Final EIR, approve the Project Approvals, and

approve an ordinance adopting the Development Agreement; and

WHEREAS, at its regular meeting of April 1, 2024, the Burlingame City Council conducted a duly noticed public hearing to consider the Planning Commission's recommendations on the Final EIR, Project Approvals, and the Development Agreement; and

WHEREAS, at that regular meeting of April 1, 2024, the Burlingame City Council certified the Final EIR (Resolution 043-2024), approved the Project Approvals (Resolution 044-2024), and introduced and adopted the first reading of this Ordinance No. 2027 adopting the Development Agreement; and

WHEREAS, at its regular meeting of April 15, 2024 the Burlingame City Council adopted this Ordinance No. 2027 adopting the Development Agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURLINGAME DOES ORDAIN AS FOLLOWS:

Section 1. The recitals set forth above are true and correct, and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. The City Council hereby finds that the proposed Ordinance is in the public interest.

Section 3. The Final EIR was properly certified by the City Council pursuant to Resolution 043-2024, which Final EIR evaluated any and all potential environmental effects caused by adoption of the Development Agreement and the Project Approvals. The Final EIR concluded that the Project would not cause any significant and unavoidable impacts and that all other impacts could be mitigated to less than significant levels through implementation of identified mitigation measures.

Section 4. That based on the recitals set forth above, the staff reports for the Project Approvals, the FEIR (including the Mitigation Monitoring and Reporting Program and all appendices), the CEQA Findings, and all other documents, reports, studies, memoranda, maps, oral and written testimony, and materials in the City's file for the Project Approvals; and all adopted City planning documents relating to the Project including the City's General Plan and Municipal Code and all other applicable City laws and regulations (collectively, the "Record"), the City Council hereby adopts the following as its findings:

1. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan with the Special Permits for building height and Development under Tier 3/Community Benefits.
2. The Development Agreement is consistent with the uses authorized in and the regulations prescribed for the BFC (Bayfront Commercial) zoning district in which

the property is located, with Special Permits for building height and Development under Tier 3/Community Benefits.

3. The Development Agreement is in conformity with public convenience, general welfare and good land use practices.
4. The Development Agreement will not be detrimental to the health, safety and general welfare of the City or the region surrounding the City.
5. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values within the City.
6. The Development Agreement will promote and encourage the development of the project by providing a greater degree of certainty with respect thereto.
7. The Development Agreement will result in the provision of public benefits, including, but not limited to, a public plaza; publicly accessible park space; cultural, arts and events spaces; commuter shuttle; sea level rise infrastructure; public parking; and a \$3,500,000 contribution towards the City's Broadway Grade Separation Project.

Section 5. The City Council hereby approves and adopts the Development Agreement attached hereto as Attachment 1 and authorizes and directs the City Manager to execute it in substantially the form attached hereto as Attachment 1, subject to minor technical conforming changes as may be approved by the City Attorney. The City Council further authorizes the City Manager to execute and record such documents, and take such actions as are necessary to consummate the transactions provided for in the Development Agreement.

Section 6. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Ordinance. The City Council of the City of Burlingame hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 7. This Ordinance shall go into effect 30 days following its adoption.

Section 8. The City Clerk is directed to publish this Ordinance in a manner required by law.

Section 9. City staff are directed to file a CEQA Notice of Determination regarding approval of the Development Agreement with the County Clerk of the County of San Mateo.



Donna Colson, Mayor

I, MEAGHAN HASSEL-SHEARER, City Clerk of the City of Burlingame, certify that the foregoing ordinance was introduced at a regular meeting of the City Council held on 1st of April 2024 and adopted thereafter at a regular meeting of the City Council held on the 15th day of 2024 by the following votes:

AYES: COUNCILMEMBERS: BROWNRIGG, COLSON, ORTIZ, STEVENSON
NOES: COUNCILMEMBERS: NONE
RECUSE: COUNCILMEMBERS: BEACH

ATTEST:



Meaghan Hassel - Shearer, City Clerk

Attachment 1: Development Agreement

- Exhibit A - Property Map
- Exhibit B - Legal Description of Property
- Exhibit C - Pre-Vesting Tentative Map Property Ownership
- Exhibit D - Post-Vesting Tentative Map Property Ownership
- Exhibit E - Temporary and Final Bay Trail Improvements
- Exhibit F - Map of Community Benefits
- Exhibit G - Impact Fees
- Exhibit H - Annual Review Form
- Exhibit I - Form of Assignment and Assumption

DRAFT

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

City of Burlingame
501 Primrose Road
Burlingame, CA 94010
Attention: City Clerk

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

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF BURLINGAME,
a municipal corporation

AND

**DW BURLINGAME I OWNER, LLC; DW BURLINGAME II OWNER, LLC; DW
BURLINGAME II OWNER A, LLC; DW BURLINGAME II OWNER B, LLC and DW
BURLINGAME III OWNER, LLC**

Adopted by Ordinance No. _____

Effective Date: _____, 2024

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LIST OF EXHIBITS:

Exhibit A	Property Map
Exhibit B	Legal Description of Property
Exhibit C	Pre-Vesting Tentative Map Property Ownership
Exhibit D	Post-Vesting Tentative Map Property Ownership
Exhibit E	Temporary and Final Bay Trail Improvements
Exhibit F	Map of Community Benefits
Exhibit G	Impact Fees
Exhibit H	Annual Review From
Exhibit I	Form of Assignment and Assumption

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (“**Agreement**”) dated for reference purposes as of _____, 2024 (“**Agreement Date**”), is entered into by and between DW Burlingame I Owner, LLC (“DW I”), a Delaware limited liability company; DW Burlingame II Owner, LLC, a Delaware limited liability company (“DW II”); DW Burlingame II Owner A, LLC, a Delaware limited liability company (“DW II A”); DW Burlingame II Owner B, LLC, a Delaware limited liability company (“DW II B”); and DW Burlingame III Owner, LLC, a Delaware limited liability company (“DW III” and together with DW I, DW II, DW II A and DW II B “**Developers**”) and the CITY OF BURLINGAME, a municipal corporation (“**City**”). Developers and City are sometimes referred to individually herein as a “**Party**” and collectively as “**Parties**.”

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties, and the following recitals are a substantive part of this Agreement and incorporated herein; terms are defined throughout this Agreement as indicated in **bold** language.

A. Developers currently have a legal and/or equitable interest in approximately 12 acres of real property located at 1200-1340 Old Bayshore Highway in Burlingame, California, depicted on Exhibit A (the “**Property Map**”) and more particularly described in Exhibit B (“**Property**”). The Property is bounded to the south by Airport Boulevard, to the east by the San Francisco Bay, to the north by office buildings and surface parking lots, and to the west by Old Bayshore Highway. Easton Creek runs west to east to the Bay through the center of the Project site. The Property is currently occupied by a mix of office, restaurant, and retail buildings, a Holiday Inn Express, and surface parking lots. The Bay Trail terminates at the south end of the Property and resumes on the north end.

B. There are eight existing, one- to three-story buildings on the Property totaling 247,466 square feet. Developers propose to redevelop the Property with three new 11-story office or research and development (“**R&D**”) buildings (the “**North Building**,” “**Center Building**,” and “**South Building**” [collectively, the “**Buildings**” or individually, a “**Building**”]) and two new 10-10.5-story parking garages (the “**Northern Parking Structure**” and the “**Southern Parking Structure**” [together, the “**Parking Structures**” or individually, a “**Parking Structure**”]) with two below grade parking levels each. Two of the five new structures, the Northern Parking Structure and North Building, would be on the portion of the site north of Easton Creek. On the south side of the creek are the Center Building, Southern Parking Structure and South Building. Three service roads off Old Bayshore Highway are proposed for access to the buildings and parking structures, one between the Northern Parking Structure and North Building, a second between the Center Building and Southern Parking Structure, and the third between the Southern Parking Structure and South Building. Other improvements include sea level rise infrastructure, a new Bay Trail along the shoreline, parks and plazas and other public amenities and infrastructure. Collectively, these improvements are the “**Project**.”

C. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risks of development, the

Legislature of the State of California enacted Government Code Section 65864 *et seq.* (“**Development Agreement Law**”), which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement establishing certain development rights and obligations pertaining to real property.

D. Developers desire to construct the Project in three phases. The order and timing of the phasing has not been determined, but the three phases will consist of the following: the North Building and Northern Parking Structure (“**Northern Phase**”), the Center Building and Southern Parking Structure, (“**Center Phase**”), and the South Building (“**Southern Phase**”). The Northern Phase, Center Phase, and Southern Phase are collectively referred to as “**Phases**” and any one is a “**Phase**.” Each Phase also includes site preparation (demolition of any existing structures and grading) and site finishing, including any related community benefits.

E. Prior to or concurrently with the approval of this Agreement, City has taken numerous actions in connection with the development of the Project on the Property and has determined that the Project complies with the policies set forth in the General Plan. These actions include:

1. Certification of an environmental impact report prepared for the Project (the “**EIR**”);
2. Design Review permit approval;
3. Vesting Tentative Subdivision Map approval;
4. Approval of Special Permit for height above 65 feet and Tier 3 increased FAR; and
5. Tree removal permit approval.

The approvals described in this Recital are collectively referred to herein as the “**Project Approvals**.”

F. As of the Agreement Date, the ownership of each Phase is as follows: the Northern Phase is owned by DW I; the Center Phase is owned by DW II, DW II A and DW II B; and the Southern Phase is owned by DW III. Prior to recording the final map, DW II A and DW II B, which are wholly owned subsidiaries of DW II, will transfer fee title in their respective Center Phase parcels to DW II. After such transfers, DW II A and DW II B will have no property interest in the Property. Exhibit C shows the parcels and ownership as they exist on the Agreement Date (“Pre-VTM Property”) and Exhibit D shows the future parcels and ownership as they will exist after the final map is recorded (“Post-VTM Property”).

G. Consistent with the Project Approvals, the parties anticipate that during the Term of this Agreement and subsequent to the Effective Date, as defined in Section 3.1 below, Developers shall seek from the City certain subsequent land use approvals, entitlements, and permits as will be necessary or desirable for implementation of the Project, collectively referred to as “**Subsequent Approvals**,” and as more particularly described in Article 9 of this Agreement. When any Subsequent Approval applicable to the Property is approved by the City, then such

Subsequent Approval shall become subject to all of the terms and conditions of this Agreement applicable to the Project Approvals and shall be treated as part of the Project Approvals, as defined in Recital E above.

H. City has determined that by entering into this Agreement, City will further the purposes set forth in the Development Agreement Law by, among other things, ensuring that the Project will provide substantial community benefits, as described below:

1. Development of a public plaza at the corner of Airport Boulevard and Old Bayshore Highway. The plaza will include terraced seating along the tidal salt marsh and a space for public events.

2. Developers will construct sea level rise (“**SLR**”) infrastructure. Developers will raise the shoreline, Bay Trail and adjacent park-like areas to a minimum elevation of 17 feet and provide infrastructure for flood protection along Easton Creek up to an elevation of no less than 16 feet and erosion protection up to 14 feet. Developers will build finished floors at an elevation of no less than 16 feet. These measures are intended to provide flood resilience through the end of the century per the City Council-adopted “Map of Future Conditions.”

3. Developers will install story boards along construction sites, subsequent phases and the Bay Trail when in a temporary condition, describing the Project generally, anticipated completion dates, and specifically the Developer-funded SLR infrastructure and Bay Trail construction timing.

4. Developers will install landscaping on both the northern and southern sides of Easton Creek within the Project site as part of the first Phase, unless the first Phase consists of the Southern Phase, in which case such landscaping shall be installed as part of the next phase.

5. Developers will provide a shuttle service along Old Bayshore Highway for the life of the Project.

6. Developers will install improvements along Old Bayshore Highway to accommodate layby drop-offs for buses and shuttles, including two shuttle stops adjacent to the Project site.

7. Developers will contribute \$3,500,000.00 dollars to the City’s Broadway Grade Separation Project.

8. Developers will provide approximately 5.5 acres of publicly-accessible open space, including a nature play/discovery area, shoreline exploration area, outdoor fitness area, public restrooms and seating, bike share, a bike repair stand, drinking fountains, and blue light emergency phones.

9. Developers will provide the following cultural arts and community spaces:

a. An amphitheater seating area along the Bay Trail at the southern portion

of the Project site that will support gathering and performance areas;

b. Interpretive/historical/educational signage, public art, and event infrastructure along the Bay Trail and other public areas; and

c. A public airplane viewing platform at the top level of the Southern Parking Structure.

I. A primary purpose of this Agreement is to assure that the Project can proceed without disruption caused by a change in City's planning policies and requirements following the Project Approvals and to ensure that the community benefits Developers commit to delivering in connection with the development of the Project are timely delivered. The terms and conditions of this Agreement have undergone review by City staff, the Planning Commission, and the City Council at publicly noticed meetings and have been found to be fair, just, and reasonable and in conformance with the Development Agreement Law and the goals, policies, standards, and land use designations specified in City's General Plan and, further, the City Council finds that the economic interests of City's citizens and the public health, safety, and welfare will be best served by entering into this Agreement.

J. For the reasons recited herein, City and Developers have determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Project Approvals, thereby encouraging planning for, investment in, and commitment to use and development of the Property. Continued use and development of the Property will in turn provide substantial employment, tax, and other public benefits to City.

K. On March 11, 2024, the Planning Commission, the initial hearing body for purposes of development agreement review, considered this Agreement and made a recommendation for approval to the City Council. On _____, 2024, the City Council adopted Ordinance No. _____ approving this Agreement (the "**Enacting Ordinance**"), which was introduced on _____, 2024.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the receipt and adequacy of which consideration is acknowledged, Developers and the City agree as follows:

AGREEMENT

ARTICLE 1. GENERAL PROVISIONS

Section 1.1 Property Subject to the Agreement. All of the Property shall be subject to this Agreement. The Parties hereby acknowledge that, as of the Effective Date, Developers have a legal and/or equitable interest in the Property. Developers further agree that all persons holding legal or equitable title in the Property shall be bound by this Agreement.

Section 1.2 Developers. The Developers are currently affiliated entities and collectively own the entire Property. As of the Effective Date, Developers currently own the Property as described and depicted on Exhibit C. Each individual Developer shall be solely

responsible to the City for the performance of the obligations under this Agreement as it relates specifically to such Developer's Property, unless otherwise described herein.

ARTICLE 2. PUBLIC BENEFITS

Section 2.1 Public Benefits Obligations. In consideration of the rights and benefits conferred by City to Developers under this Agreement, Developers shall perform and provide the specific public benefits described in the Project Approvals and in this Article 2 (the "**Public Benefits**"), some of which may exceed the dedications, conditions, and exactions that City may impose under Applicable City Regulations, as defined in Section 4.1.A below.

Section 2.2 Developers' Financial Contribution to City's Broadway Grade Separation Project.

A. Developers collectively shall pay City a total of \$3,500,000.00 (the "**Developer Grade Separation Contribution**") which City shall use to fund its proposed Broadway Grade Separation Project (currently described as City Project No. 82540).

B. The Developer Grade Separation Contribution is due in three installments. The first installment shall be in the amount of \$1,500,000.00 and paid prior to issuance of the first building permit for the first Building. The subsequent installments shall each be in the amount of \$1,000,000 and paid prior to the issuance of the first certificate of occupancy for each of the second and third Buildings. The Developer owning the Property upon which a particular Project Building is constructed shall be responsible for the payment of the required installment. For example, if the Northern Phase begins construction first, the owner of that Property would be responsible for the first installment of \$1,500,000.00. Thereafter, the owner(s) of the Center Phase and the Southern Phase would each be responsible for the other two installments of \$1,000,000.00.

Section 2.3 Developer Transportation Improvements and Contributions.

A. Developers shall enter into an agreement with a shuttle service provider (currently anticipated to be the Commute.org joint powers authority) to fund the shuttle service provider's establishment and maintenance of shuttle service along Old Bayshore Highway as necessary to maintain 15-minute headways or better during the weekday peak commute periods for the life of the Project. Developers must also install and maintain shuttle stop signage and stop improvements for two shuttle stops which support public drop-off, pick-up, loading, car share access, and fire department apparatus use. The shuttle stops must include at least one stop in the plaza of the South Building and one stop along Easton Creek. Developers' obligations under this Section 2.3.B to enter into such agreement with a shuttle service provider, make the first payment to the shuttle service provider, and install the shuttle stop along Easton Creek must be met prior to occupancy of any Building in the first Phase. The shuttle stop in the plaza of the South Building must be completed prior to occupancy of the South Building. Developers understand and agree that the shuttle service obligations under this Section 2.3.B are intended to provide shuttle service for the life of the Project.

B. Developers shall install improvements along Old Bayshore Highway to accommodate layby drop-offs for buses and shuttles.

Section 2.4 Other Public Improvements.

A. For purposes of this Section 2.5, "**Finally Granted**" shall mean that (i) any and all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Project Approvals, this Agreement, or the EIR shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Project Approvals, this Agreement, or the EIR, as applicable, shall have been upheld by a final decision in each such appeal and the entry of a final judgment, order or ruling upholding the applicable Project Approvals, this Agreement, or the EIR and (ii) if a referendum petition relating to this Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measure are certified in the manner provided by the Elections Code reflecting the final defeat or rejection of the referendum.

B. Early Delivery of Bay Trail. Within three (3) years of all of the Project Approvals being Finally Granted ("**Early Bay Trail Deadline**"), including but not limited to any approvals required by third party agencies, Developers shall construct the Bay Trail in temporary condition along the border of Project site fronting the Bay, except along Easton Creek, where the temporary trail may parallel rather than cross the creek, generally in the location depicted in Exhibit E ("**Temporary Bay Trail**"). No fewer than one (1) bench and one (1) garbage can shall be installed within the Project site near the Temporary Bay Trail's northern and southern entrances. If the certificate of occupancy of any Building is received prior to the Early Bay Trail Deadline, then the Bay Trail shall be provided in final condition for that Phase (generally in the location depicted in Exhibit E) that includes the completed Building and in temporary condition for the other phases. Further, the bridge over Easton Creek shall be constructed if the first Phase includes the North Building or Center Building, but not if the first Phase includes the South Building. Finally, notwithstanding the Parties' understanding that each Developer is responsible for obligations under this Agreement related to the portions of the Property that each Developer owns as described in Section 1.2, installation of the Temporary Bay Trail by the Early Bay Trail Deadline must be met in accordance with this section 2.4.B and any and all Developers will be jointly and severally liable for meeting such obligation.

C. Public Plaza. Prior to the certificate of occupancy of the Phase including the South Building, the Developer shall construct a public plaza at the corner of Airport Boulevard and Old Bayshore Highway, generally in the location depicted in Exhibit F.

D. Sea Level Rise Infrastructure. The SLR infrastructure shall raise the shoreline, Bay Trail and adjacent park-like areas to a minimum elevation of 17 feet and providing infrastructure for flood protection along Easton Creek up to an elevation of 16 feet and erosion protection up to 14 feet. Building finished floors will be at an elevation of 16 feet. The SLR infrastructure will be integrated into each Phase of the Project and constructed concurrently with each Phase of the Project.

E. Story Boards. Story boards shall be installed along the perimeter of the Project site that is in a temporary condition, including along construction sites, subsequent Phases and the Bay Trail when in a temporary condition, describing the Project generally, and specifically the Developer-funded SLR infrastructure and Bay Trail.

F. Easton Creek Landscaping. Install improvements and landscaping on both the northern and southern sides of Easton Creek within the Project site as part of the first Phase, unless the first Phase consists of the Southern Phase, in which case such landscaping shall be installed as part of the next Phase. Location and type of proposed improvements and landscaping are shown on Exhibit F, but the Public Works Director shall review and approve such improvements and landscaping prior to installation.

G. Publicly-Accessible Open Space. The Project shall include approximately 5.5 acres of publicly accessible open space, including a nature play/discovery area, shoreline exploration area, outdoor fitness area, public art, public restrooms and seating, bike share (provided that a bike share service provider is available), a bike repair stand, drinking fountains, and blue light emergency phones, each as generally and conceptually depicted in Exhibit F. Final locations and specific details of the improvements shown on Exhibit F within the publicly accessible open space shall be reviewed and approved by the Community Development Director prior to issuance of the building permit for the first Building for each Phase.

H. Southern Amphitheater. The Phase that includes the Southern Building shall include an amphitheater seating area along the Bay Trail at the southern portion of the Project site that will support gathering and performance areas, generally as depicted in Exhibit F.

I. Interpretative Signage. The Bay Trail and other public areas shall include interpretive and educational signage.

J. Public Airplane Viewing Platform. The Southern Parking Structure shall include an airplane viewing platform at the top level that is open to the public.

K. Public Parking Spaces. 40 of the parking stalls on Level 1 in the South Parking Structure will be public stalls dedicated to the proposed restaurant/café use and Bay Trail users (“Permanent Public Stalls”) and no fewer than an additional 210 parking stalls will be provided for public use on weekday evenings, and weekends and state holidays (“Additional Public Stalls”). All public stalls will be provided in the Southern Parking Structure. The Permanent Public Stalls will be open to the public from 6:00 am to 10:00 pm seven days per week. The Additional Public Stalls will be open to the public from 6:00 pm to 10:00 pm Monday through Friday and from 6:00 am to 10:00 pm on Saturdays and Sundays and on any day on which the office of the Secretary of State of California is closed as a legal holiday.

Section 2.5 Sales Tax Point of Sale Designation. Developers shall use good faith and commercially reasonable efforts to require all persons and entities providing bulk lumber, concrete, structural steel and pre-fabricated building components, such as roof trusses, used in connection with the construction and development of, or incorporated into, the Project, to: (A) obtain a use tax direct payment permit; (B) elect to obtain a subcontractor permit for the job site of a contract valued at Five Million Dollars (\$5,000,000) or more; or (C) otherwise designate the Property as the place of use of material used in the construction of the Project in order to have the local portion of the sales and use tax distributed directly to the City instead of through the County-wide pool, all to the extent allowed by law. Developers shall instruct, in writing, each of its general contractors to cooperate with the City to ensure the full local sales/use tax is allocated to City. To

assist City in its efforts to ensure that the full amount of such local sales/use tax is allocated to the City of Burlingame, Developers shall instruct their respective general contractors to provide City with an annual spreadsheet, which includes a list of all subcontractors with contracts in excess of the amount set forth above, a description of all applicable work, and the dollar value of such subcontracts. City may use said spreadsheet sheet to contact each subcontractor who may qualify for local allocation of use taxes to the City. Notwithstanding any of the foregoing, Developers are obligated to instruct their general contractors cooperate with the City and provide the annual spreadsheets. The terms of this Section 2.6 shall only apply to the construction of the Buildings and the Parking Structures and shall not apply to any subsequently performed tenant improvement work within a Building.

Section 2.6 City of Burlingame Business License. Developers, at their expense, shall obtain and maintain a City of Burlingame business license at all times during the Term, and shall include a provision in all general contractor agreements for the Project requiring each such general contractor to obtain and maintain a City of Burlingame business license during performance of the work of construction.

ARTICLE 3. EFFECTIVE DATE AND TERM

Section 3.1 Effective Date. This Agreement shall become effective thirty (30) days after the date that the Enacting Ordinance is adopted by the City Council (the “**Effective Date**”).

Section 3.2 Term. The Term has been established by the Parties as a reasonable estimate of the time required to carry out and develop the Project and provide the Public Benefits of the Project, and shall be defined as the Initial Term plus any Extended Term or Extended Terms.

A. Initial Term. The “**Initial Term**” of this Agreement shall commence on the Effective Date and shall expire on the date which is ten (10) years thereafter unless earlier terminated as provided in this Agreement.

B. Extended Term. Subject to the terms and conditions in this Section 3.2.B, Developers shall have the right to request two separate extensions of the Initial Term for five (5) years each (individually each an “**Extended Term**” and collectively the “**Extended Terms**”) for a full term not to exceed twenty (20) years. The Initial Term may also be subject to potential further extension for Force Majeure Delays as provided in Section 3.2.D below.

1. First Extension Criteria. In order to request the first extension, Developers shall be in compliance with all of their obligations under this Agreement and Project Approvals at the time the extension request is made and at the time the extension would become effective. To request the first extension, Developers shall have completed construction to grade of the foundation for the first Building (which shall, at minimum, include construction up to finished ground floor elevation and all underlying deep foundation components including but not limited to fill, pilings, and footings)(the “**First Extension Criteria**”). If construction is not underway and ongoing at the time of the First Extension request, then the site shall be secured and kept clean, orderly, free of debris, and otherwise in a state that reflects best construction management practices. For purposes of this Section 3.2, Developers shall be considered in compliance with their obligations under this Agreement if they are not in Default, as defined in

Section 11.1. If Developers desire to request the first extension, Developers must submit a letter addressed to the City Manager requesting such extension at least sixty (60) days prior to the date that the Initial Term otherwise would expire (“**First Extension Request**”). The First Extension Request shall include documentation demonstrating that the First Extension Criteria have been satisfied or will be satisfied prior to the date that the Initial Term otherwise would expire. City shall grant the requested extension if the Developers are in compliance with this Agreement and if Developers have met the First Extension Criteria; provided, however, that if one or more Developers is or are not in compliance with this Agreement but the other Developer or Developers is in compliance, City shall grant the requested extension for any Developer that is in compliance and such extension shall only apply to that portion of the Property owned by the Developer in compliance. City’s determination whether Developers have met the First Extension Criteria shall be based solely upon the objective criteria in this Section 3.2.B.1, such that the decision to extend this Agreement is ministerial and is not discretionary. Within ten (10) days after the written request of either Party hereto, City and Developer agree to execute, acknowledge, and record in the Official Records of San Mateo County a memorandum evidencing any approved extension of the Initial Term pursuant to this Section 3.2.B.1.

2. Second Extension Criteria. In order to request the second extension, Developers shall be in compliance with all of their obligations under this Agreement and Project Approvals at the time the extension request is made and at the time the extension would become effective. To request the second extension, Developers shall have obtained (i) certificate of occupancy for the first Building, and (ii) final inspection approval for the core and shell of the second Building, where the term “**core and shell**” refers to the building structure and envelope without interior finishes (the “**Second Extension Criteria**”). If Developers desire to request the second extension, Developers must submit a letter addressed to the City Manager requesting such extension at least sixty (60) days prior to the date that the Extended Term otherwise would expire (“**Second Extension Request**”). The Second Extension Request shall include documentation demonstrating that the Second Extension Criteria have been satisfied or will be satisfied prior to the date that the Extended Term otherwise would expire. The City shall grant the requested extension if the Developers are in compliance with this Agreement and if the City determines that the Developers have met the Second Extension Criteria; provided, however, that if one or more Developers is or are not in compliance with this Agreement but the other Developer or Developers is or are in compliance, City shall grant the requested extension for any Developer that is in compliance and such extension shall only apply to that portion of the Property owned by the Developer in compliance. City’s determination whether Developers have met the Second Extension Criteria shall be based solely upon the objective criteria in this Section 3.2.B.2, such that the decision to extend this Agreement is ministerial and is not discretionary. Within ten (10) days after the written request of either Party hereto, City and Developers agree to execute, acknowledge, and record in the Official Records of San Mateo County a memorandum evidencing any approved extension of the Extended Term pursuant to this Section 3.2.B.2.

C. Effect of Termination. Upon the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions set forth in Section 11.7 (“**Surviving Provisions**”) below.

D. Force Majeure Delay. Subject to the limitations and notice requirements set forth below in Section 3.2.D.1, the Term of this Agreement and the time within

which either Party shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by Force Majeure, and as unforeseen at the time this Agreement was executed by the parties. For purposes of this Agreement, “**Force Majeure**” is defined as strikes, lock outs, and other labor difficulties; Acts of God; unusually severe weather, but only to the extent that such weather or its effects (including, without limitation, dry out time) result in delays that cumulatively exceed twenty (20) days for any winter season occurring after commencement of construction of the Project; failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body; changes in local, state, or federal laws or regulations; any development moratorium or any action of other public agencies that regulate land use, development, or the provision of services that prevents, prohibits, or delays construction of the Project, including without limitation any extension authorized by Government Code Section 66463.5(d); or enemy action; civil disturbances; wars; terrorist acts; fire; a state or federal declaration of emergency based on an epidemic or pandemic; unavoidable casualties; mediation, arbitration, litigation, or other administrative or judicial proceeding involving the Project Approvals or this Agreement, including without limitation any extension authorized by Government Code Section 66463.5(e) (each a “**Force Majeure Delay**”). Developer’s inability or failure to obtain financing shall not be deemed to be a cause outside the reasonable control of the Developer and shall not be the basis for a Force Majeure Delay or any other excused delay under the terms of this Agreement.

1. Extension of Times of Performance. An extension of time for any Force Majeure Delay shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if Notice (as defined in Section 13.5) by the Party claiming such extension is sent to the other Party within sixty (60) days of the commencement of the cause. If Notice is sent after such sixty (60) day period, then the extension shall commence to run no sooner than sixty (60) days prior to the giving of such Notice. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City Manager and Developers.

Section 3.3 City Representations and Warranties. City represents and warrants to Developers that:

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

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

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

D. The foregoing representations and warranties are made as of the Agreement Date. During the Term of this Agreement, City shall, upon learning of any fact or

condition which would cause any of the warranties and representations in this Section 3.3 not to be true, immediately give written Notice of such fact or condition to Developers.

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

A. Developer is duly organized and validly existing under the laws of the State of Delaware and is authorized to do business in California and has all necessary powers to own property interests and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

B. The execution and delivery of this Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary company action and all necessary member approvals have been obtained.

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

D. Developer has not: 1) made a general assignment for the benefit of creditors; 2) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Developer's creditors; 3) suffered the appointment of a receiver to take possession of all, or substantially all, of Developer's assets; 4) suffered the attachment or other judicial seizure of all, or substantially all, of Developer's assets; 5) admitted in writing its inability to pay its debts as they come due; or 6) made an offer of settlement, extension, or composition to its creditors generally.

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

ARTICLE 4. DEVELOPMENT OF PROPERTY

Section 4.1 Definitions. A. Applicable City Regulations. For purposes of this Article and the Agreement, "**Applicable City Regulations**" means:

1. The City's development standards for the Property, including the permitted uses and zoning classifications, maximum density, and/or total number of residential units, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the terms, conditions, restrictions, and requirements for subsequent discretionary actions, the provisions of public improvements and financing of public improvements, and other terms and conditions of development as set forth in the General Plan, Municipal and Zoning Code, and other City rules, regulations, ordinances, and official policies applicable to the Project on the Effective Date;

2. All State and Federal laws and regulations applicable to the Property and the Project as enacted, adopted, and amended from time to time.

3. Any New City Laws, defined in Section 4.1.C below, that apply to the Property, as herein set forth in subsection A of Section 4.2 (“**Vested Rights of Developer**”) and subsections C and D of Section 4.3 (“**Reservations of City Authority**”).

B. Conflict. For purposes of this Article, “**conflict**” means a modification to the Project Approvals or this Agreement that purport to:

1. Limit the permitted uses of the Property, the density and intensity of use (including but not limited to floor area ratios of buildings), or the maximum height and size of proposed buildings;

2. 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 this Agreement;

3. Impose conditions upon development of the Property other than as permitted by the Project Approvals, the Applicable City Regulations, Changes in the Law (as provided in Section 4.8), and this Agreement;

4. Limit the timing, phasing, or rate of development of the Property;

5. Limit the location of building sites, grading, or other improvements on the Property in a manner that is inconsistent with or substantially more restrictive than the limitations included in the Project Approvals and this Agreement;

6. Limit or control the ability to obtain public utilities, services, or facilities (provided, however, nothing herein shall be deemed to exempt the Project or the Property from any water use rationing requirements that may be imposed on a City-wide basis from time to time in the future or be construed as a reservation of any existing sanitary sewer or potable water capacity);

7. Require the issuance of additional permits or discretionary approvals by City other than those required by Applicable City Regulations, the Project Approvals, and this Agreement;

8. Establish, enact, increase, or impose against the Project or the Property any special taxes or assessments other than those specifically permitted by this Agreement, including Section 5.2;

9. Apply to the Project any New City Laws that are not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites;

10. Impose against the Project any condition or exaction, including and dedication, not specifically authorized by Applicable City Regulations, the Project Approvals or this Agreement;

11. Limit the processing or procuring of applications and approvals of Subsequent Approvals; or

12. Impose against the Project any obligations regarding affordable housing not specifically required by the Commercial Linkage Fee, the Project Approvals, or this Agreement.

C. New City Laws. For purposes of this Article and the Agreement, “**New City Laws**” means and includes any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines, or other regulations, which are promulgated or adopted by City (including but not limited to any City Board, Commission, officer or employee) or its or their electorate (through the power of initiative, referendum or otherwise) after the Effective Date.

Section 4.2 Vested Rights of Developer. Developer shall have the vested right to develop the Property and the Project in accordance with and subject to the terms and conditions of this Agreement, the Project Approvals, and the Applicable City Regulations, which shall control the permitted uses, density and intensity of use of the Property, and the maximum height and size of buildings on the Property.

A. New City Laws. Except as otherwise provided in this Agreement, no New City Laws that conflict with the Project Approvals or this Agreement shall apply to the Project or the Property.

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

A. Regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure then applicable in City at the time the development permit application is deemed complete;

B. Pursuant to California Building Code Section 1.1.9, regulations governing construction standards and specifications, including City’s building code, plumbing code, mechanical code, electrical code, fire code, and grading code, and all other uniform construction codes then applicable in City at the time a permit application is submitted;

C. New City Laws applicable to the Property or Project at the time the permit application is deemed complete, which do not conflict with the Project Approvals, any other provision of this Agreement, or Developers’ vested rights under Section 4.2, provided that such New City Laws are uniformly applied on a Citywide basis to all substantially similar types of development projects;

D. New City Laws which may be in conflict with the Project Approvals or this Agreement but which are necessary to protect persons or property from dangerous or hazardous conditions that create a threat to the public health or safety or create a physical risk, provided that such New City Laws are uniformly applied on a Citywide basis.

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

Section 4.5 Life of Project Approvals; Vesting Tentative Subdivision Map ("VTM") Conflicts. The term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Agreement or the term otherwise applicable to such Project Approvals. The Parties acknowledge that the Developers have received a VTM for the Project that vests certain rights under the Subdivision Map Act. The Parties agree that in the event of any conflict between the provisions of this Agreement and the VTM, this Agreement shall control. If this Agreement expires or is earlier terminated in accordance with its terms, the VTM shall remain in effect for its remaining life, if any, in accordance with the Subdivision Map Act. The Parties' agreements in the foregoing sentence shall survive the expiration or earlier termination of this Agreement.

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

Section 4.7 Timing of Development. Developers shall have the vested right to develop the Project in such order, at such rate, and at such times as each Developer deems appropriate in the exercise of its business judgment. In particular, and not in any limitation of any of the foregoing, the Parties note that the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider, and

expressly provide for, the timing of development resulted in a later adopted initiative restricting the timing of development. It is the desire of the Parties hereto to avoid that result. Notwithstanding the adoption of an initiative after the Effective Date by City's electorate to the contrary, the Parties acknowledge that, except as otherwise provided for in this Agreement, each Developer shall have the vested right to develop its components of the Project in such order and at such rate and at such times as each Developer deems appropriate in the exercise of its business judgment.

Section 4.8 Changes in the Law. As provided in Section 65869.5 of the Development Agreement Law, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans, or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or by changes in laws, regulations, plans, or policies of special districts or other governmental entities, other than City, created or operating pursuant to the laws of the State of California ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law. Following the meeting between the Parties, the provisions of this Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such Changes in the Law. In such event, this Agreement together with any required modifications shall continue in full force and effect. In the event that the Changes in the Law operate to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Agreement, Developers may terminate this Agreement by Notice to City. Nothing in this Agreement shall preclude Developers from contesting by any available means (including administrative or judicial proceedings) such Changes in the Law or their applicability to the Project and, in the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect unless the Parties mutually agree otherwise.

Section 4.9 Conditions of Subsequent Approvals. No conditions imposed on Subsequent Approvals (defined in Section 9.1) shall require dedications or reservations for, or construction or funding of, public infrastructure or public improvements beyond those included in the Project Approvals, except as required or expressly permitted by this Agreement.

Section 4.10 Sets of Project Approvals. Prior to the Effective Date, the Parties shall have prepared two sets of the Project Approvals, one set for City and one set for Developers, to which shall be added from time to time any Subsequent Approvals, so that if it becomes necessary in the future to refer to any of the Project Approvals, there will be a common set available to the Parties. Failure to include any rule, regulation, policy, standard, or specification in the sets of Project Approvals as described in this Agreement shall not affect the applicability of such rule, regulation, policy, standard, or specification.

ARTICLE 5. FEES, TAXES, AND ASSESSMENTS

Section 5.1 Developer Impact Fees.

A. Definition of Impact Fees. For purposes of this Agreement, "**Impact Fees**" shall mean the monetary fees and impositions, other than taxes and assessments,

charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of a development project or the development of the public facilities and services related to a development project, including but not limited to the Commercial Linkage Fee, Public Facilities Impact Fee, and any other City “fee” as that term is defined by Government Code Section 66000(b). For purposes of this Agreement, “**New Impact Fees**” means those Impact Fees adopted by City after the Effective Date of this Agreement.

B. Payment of Impact Fees. For the period commencing on the Effective Date and continuing until expiration of the Initial Term, Developer shall pay when due all Impact Fees applicable to the Project in accordance with this Agreement in effect as of the Effective Date at the rates in effect as of the Effective Date. The City shall not charge and Developers shall not be subject to any New Impact Fee(s), except as otherwise set forth in this Agreement.

1. Phase 1 Impact Fees. Developers must pay at least 50% of Impact Fees due for the first Phase prior to issuance of any building permit for vertical construction of the Building in the first Phase. Developers may defer the remaining 50% of Impact Fees due for the first Phase to issuance of certificate of occupancy for the Building in the first Phase.

2. Impact Fees for Subsequent Phases. Impact Fees due for the second and third Phases must be paid prior to issuance of the first building permit(s) for vertical construction of the Building in each of those Phases.

C. Impact Fees Due in Extended Term(s). Subject to the Impact Fee payment timing requirements described in B.1 and B.2 above, if the term of this Agreement is extended pursuant to Section 3.2.B, during the Extended Term(s), Developers must pay Impact Fees at rates in effect on the date that the extension is recorded, except that if an Impact Fee does not have an escalator, the fee must be increased using Consumer Price Index (“**CPI**”). During the Extended Term(s), Developers must also pay any New Impact Fees in effect at the rate in effect on the date that the extension is recorded.

D. Exhibit G. The Impact Fees itemized on Exhibit G represent the Parties’ good faith effort to identify the Impact Fees applicable to the Project, including the applicable escalators as set forth in the City’s Impact Fee resolutions or, where applicable, the CPI. City and Developers agree to amend and restate Exhibit G, as necessary, in the event one or more Impact Fees have been inadvertently omitted or miscalculated or if any escalation provisions have been inadvertently misstated.

E. No Credits. Developers shall not be entitled to any credits toward Impact Fees due on account of the Public Benefits provided by Developers under this Agreement.

F. Connection Fees. For purposes of this Agreement, “**Connection Fees**” means those fees charged by the City or by a utility provider to utility users as a cost for connection to water, sanitary sewer, and other applicable utilities. Subject to Developers’ right to protest and/or pursue a challenge in law or equity to any new or increased Connection Fees, Developers shall pay Connection Fees assessed by utility providers and other agencies assessing such fees at the rates in effect from time to time.

G. Processing Fees. For purposes of this Agreement, “**Processing Fees**” means all fees charged on a City-wide basis as part of the City’s Master Fee Schedule to cover the cost of City processing of development project applications, including any required supplemental or other further environmental review, plan checking (time and materials) and inspection and monitoring for land use approvals, design review, grading and building permits, General Plan maintenance fees, and other permits and entitlements required to implement the Project, which fees are in effect at the time those permits, approvals, or entitlements are applied for, and which fees are intended to cover the City’s actual costs of processing the foregoing. Subject to Developers’ right to protest and/or pursue a challenge in law or equity to any new or increased Processing Fees, City may charge and Developers agree to pay all Processing Fees which are in effect on a City-wide basis at the time Developers apply for permits, approvals, or entitlements.

H. Other Agency Fees. Nothing in this Agreement shall preclude City from collecting fees from Developers that are lawfully imposed by another agency having jurisdiction over the Project, which City is required to collect pursuant to Applicable City Regulations, State or Federal Law (“**Other Agency Fees**”).

Section 5.2 Taxes and Assessments. Developers covenant and agree to pay prior to delinquency all existing taxes and assessments and any and all new taxes or assessments that are adopted after the Effective Date and which conform to the terms of this Agreement, including this Section 5.2. As of the Agreement Date, City is unaware of any pending efforts to initiate, or consider applications for new or increased special taxes or assessments covering the Property, or any portion thereof. City shall retain the ability to initiate or process applications for the formation of new assessment districts or imposition of new taxes covering all or any portion of the Property in accordance with the Applicable City Regulations, but only if such taxes or assessments are adopted by or after Citywide voter approval, or approval by landowners subject to such taxes or assessments, and are imposed on other land and projects of the same category within the jurisdiction of City in a reasonably proportional manner as determined by City, and, as to assessments, only if the impact thereof does not fall disproportionately on the Property as compared to the benefits accruing to the Property as indicated in the engineers report for such assessment district. Nothing herein shall be construed so as to limit Developers from exercising whatever rights they may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property. In the event an assessment district is lawfully formed to provide funding for services, improvements, maintenance or facilities which are substantially the same as those services, improvements, maintenance or facilities being funded by the Impact Fees to be paid by Developers under the Project Approvals or this Agreement, then such Impact Fees payable by Developers shall be subject to reduction/credit in an amount equal to Developers’ new or increased assessment under the assessment district. Alternatively, the new assessment district shall reduce/credit Developers’ new assessments in an amount equal to such Impact Fees to be paid by Developers under the Project Approvals or this Agreement. In calculating any reduction or credit, the Parties shall take into account the timing of payment of the Impact Fee and the new or increased assessment.

Section 5.3 MMRP Fair Share Contributions. As set forth in Section 8.8 below, Developer is required and agrees to comply with all mitigation measures adopted as part of the

Project Approvals. One mitigation measure requires Developers' payment of a fair share contribution relating to water supply, as follows:

A. Development Offset Program Contribution. As described in the EIR, the City has determined that there would not be sufficient water supplies during multiple dry years with implementation of the State Water Resources Control Board Bay-Delta Plan Amendment. However, as further described in the EIR, the Project's fair share contribution to the City's Development Offset Program would ensure the funding of water conservation programs to offset the Project's contribution to the supply shortage (the "**Development Offset Program Fee**"), which is based on a supply shortage of 4.2 million gallons per year in the worst-case multi-year drought scenario due in part to the Project affecting the overall demand. The Development Offset Program Fee shall be calculated prior to issuance of certificate of occupancy for the first Building, and Developers shall pay the Development Offset Program Fee in three installments prior to issuance of certificate of occupancy for each of the three Buildings (the Center Building, the South Building, and the North Building) in amounts proportional to each building's square footage.

ARTICLE 6. ANNUAL REVIEW

Section 6.1 Periodic Review.

A. Purpose. As required by California Government Code Section 65865.1, City and Developers shall review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project every 12 months following the Effective Date to determine good faith compliance with this Agreement. Each annual review shall also document the status of the Project development and any extension of the Initial Term of this Agreement pursuant to Section 3.2.B above. Developers shall have the right to either file a joint report or each Developer may file its own report with respect to the portion of the Project it owns.

B. Conduct of Annual Review. The annual review shall be conducted as provided in this Section 6.1. By December 1st of each year following the Effective Date, Developers shall provide documentation of its good faith compliance with this Agreement during the year by submitting a completed Annual Review Form in the form provided in Exhibit H ("**Annual Review Form**") and such other information as may reasonably be requested by the Community Development Director. The Community Development Director shall give notice to the Developers at least ten (10) days in advance of the time that the compliance determination will be considered by the City Council, and the City Council shall make the compliance determination consistent with the procedure in Burlingame Municipal Code Section 25.104.130. In the event that the City Council determines Developers are not in good faith compliance with the terms and conditions of this Agreement, the City Council shall allow an opportunity to cure as described in Section 11.1. If Developers fail to perform the action or covenant required by this Agreement within the applicable cure period, the City Council may exercise its right to modify or terminate this Agreement by following the procedure in Burlingame Municipal Code Section 25.140.140 or take any other actions allowed by this Agreement and by law.

C. Failure to Conduct Annual Review. Failure of City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the

provisions of this Agreement nor shall Developers have or assert any defense to such enforcement by reason of any such failure to conduct an annual review. However, if the annual review is not submitted by Developer or Developers and City does not provide notice of such failure within thirty (30) days after it was due, such failure shall not be the basis for a Default.

ARTICLE 7. MORTGAGEE PROTECTION

Section 7.1 Mortgagee Protection. This Agreement shall not prevent or limit any Developer in any manner, at such Developer's sole discretion and without the City's consent, from encumbering the Property or any portion thereof or any improvement thereon by (i) any mortgage, deed of trust, or other security device securing financing with respect to the Property, or (ii) any pledge of direct or indirect interests in Developer securing financing with respect to the Property ("**Mortgage**"). This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the Agreement, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of a Mortgagee (as that term is defined below) who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise. The term **Mortgagee** means (i) any person or entity who are beneficiaries under a mortgage encumbering the Property, or a portion thereof or any improvement thereon, (ii) any person or entity who is the beneficiary under a pledge of direct or indirect interests in Developer, and/or (iii) any designee of the foregoing.

Section 7.2. Mortgagee Not Obligated. Notwithstanding the terms of this Article 7,, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of the Project, or any portion thereof, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with the Project Approvals and this Agreement nor to construct any improvements thereon or institute any uses other than those uses and improvements provided for or authorized by the Project Approvals and this Agreement.

Section 7.3 Notice of Default to Mortgagee; Right to Cure. With respect to any Mortgage granted by any Developer as provided herein, then so long as any such Mortgage shall remain unsatisfied, the following provisions shall apply:

A. City, upon serving Developers any Notice of Default (as defined in Section 11.1), shall also serve a copy of such Notice upon the Mortgagee for such Developer then in Default at the address provided to City, and no Notice by City to Developers hereunder shall affect any rights of a Mortgagee or any Mezzanine Lender unless and until a copy thereof has been so served on such Mortgagee or Mezzanine Lender, as applicable; provided, however, that failure so to deliver any such Notice shall in no way affect the validity of the Notice sent to Developers as between Developers and City.

B. In the event of a Default (as defined in Section 11.1) by any Developer, any Mortgagee or Mezzanine Lender shall have the right to cure, or cause to be cured, such Default within sixty (60) days following the later to occur of (1) the date of Mortgagee's or Mezzanine Lender's receipt of the Notice referred to in Section 7.3.A above, or (2) the expiration of the period provided herein for such Developer to cure such Default, and City shall accept such performance by or at the insistence of the Mortgagee or Mezzanine Lender, as applicable, as if the same had been timely made by such Developer; provided, however, that (1) if such Default is not capable of being cured within the timeframes set forth in this Section 7.3.B and Mortgagee or Mezzanine Lender commences to cure the Default within such timeframes, then Mortgagee or Mezzanine Lender shall have such additional time as is required to cure the Default so long as Mortgagee or Mezzanine Lender diligently prosecutes the cure to completion and (2) if possession of the Property (or portion thereof) is required to effectuate such cure, the Mortgagee or Mezzanine Lender shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within ninety (90) days after receipt of the copy of the Notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure with respect to any default that is susceptible of cure, except as otherwise provided in Section 7.2. If a Mortgagee or Mezzanine Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Developer (or direct or indirect equity interests in Developer, as applicable) from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified in Section 7.3.B for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition.

C. So long as a Mortgagee or Mezzanine Lender shall be diligently exercising its cure rights under this Agreement, City shall not pursue any remedies against Developers as provided in Article 11 below, including, without limitation, exercising any right to terminate this Agreement.

D. No Mortgagee or Mezzanine Lender shall become liable under this Agreement unless and until such time it becomes, and then only for so long as it remains, the owner of, or has control over, the interest in the Project, and no performance by or on behalf of a Mortgagee or a Mezzanine Lender of a Developer's obligations hereunder shall cause such Mortgagee or Mezzanine Lender to be deemed to be a "mortgagee in possession" unless and until such Mortgagee shall take possession or ownership of the Project or such Mezzanine Lender shall take possession or ownership of a Developer, as applicable.

E. If there is more than one Mortgagee, the rights and obligations afforded by this Article 7 to a Mortgagee shall be exercisable only by the party whose collateral interest in the Project is senior in lien (or has obtained the consent of any Mortgagee whose Mortgage is senior to the Mortgage of such Mortgagee).

F. Any Notice or other communication which City shall desire or is required to give to or serve upon the Mortgagee or Mezzanine Lender shall be in writing and shall be served in the manner set forth in Section 13.5, addressed to the Mortgagee or Mezzanine Lender at the address provided by Mortgagee or Mezzanine Lender, as applicable, to City. Any Notice or other communication which Mortgagee or Mezzanine Lender shall give to or serve upon City shall

be deemed to have been duly given or served if sent in the manner and at City's address as set forth in Section 13.5, or at such other address as shall be designated by City by Notice in writing given to the Mortgagee or Mezzanine Lender in like manner.

Section 7.4 No Supersedure. Nothing in this Article 7 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations, if any, under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside this Agreement.

Section 7.5 Technical Amendments to this Article 7. City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Agreement or execute instruments that are required by lenders for the acquisition and construction of the improvements on the Property or any refinancing thereof and to otherwise cooperate in good faith, at Developers' expense, to facilitate Developers' negotiations with lenders.

ARTICLE 8. AMENDMENT OF AGREEMENT OR PROJECT APPROVALS

Section 8.1 Amendment of Agreement by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the Parties hereto or their successors-in-interest or assigns. Subject to the requirements of this Article 8, any amendment (whether a Major Amendment or Minor Amendment) that only affects a portion of the Property over which one or more Developers does not have an interest may be effectuated by mutual written consent of the affected Developer or Developers and the City; provided, however, that the other Developer or Developers shall be given written notice of the proposed amendment and its substance at least thirty (30) days prior to its execution. Upon written request of Developer or Developers for an amendment or modification of this Agreement, the City Manager or designee shall determine whether the requested amendment or modification is a Minor Amendment, as defined in Section 8.2, when considered in light of the Project as a whole. For purposes of this Agreement, the City Manager or designee's determination of whether the requested amendment or modification is Minor or Major shall be deemed final and not subject to further appeal.

Section 8.2 Definition of Minor Amendments. For purposes of this Agreement, a "**Minor Amendment**" shall be any change or modification to the Agreement that does not substantially affect the following:

- A. The Term of this Agreement;
- B. The permitted uses of the Property;
- C. Provisions for the reservation or dedication of land;
- D. Conditions, terms, restrictions, or requirements for subsequent discretionary actions;
- E. The density or intensity of use of the Property or the maximum height or size of proposed buildings;

F. The nature, timing of delivery, or scope of public improvements required by the Project Approvals; or

G. The amount of any monetary contributions by Developers.

Section 8.3 Minor Amendments to the Agreement. If the City Manager or designee determines that the amendment or modification is a Minor Amendment to the Agreement, as set forth in Section 8.2, the Minor Amendment may be approved by the City Manager or designee in writing and shall not, except to the extent otherwise required by Applicable City Regulations, require notice or public hearing before the Parties may execute the Minor Amendment.

Section 8.4 Major Amendment. Any amendment to this Agreement other than a Minor Amendment shall be deemed a “**Major Amendment**” and shall be subject to approval by the City Council by ordinance following duly noticed public hearings before the Planning Commission and City Council consistent with Government Code Sections 65867, 65867.5 and 65868.

Section 8.5 Requirement for Writing. No modification, Minor or Major Amendment, or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing that refers expressly to this Agreement and is signed by duly authorized representatives of the City and any affected Developers or their successors.

Section 8.6 Amendments to Development Agreement Law. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Law as those provisions existed as of the Effective Date of this Agreement. No amendment or addition to those provisions which would materially affect the interpretation or enforceability of this Agreement shall be applicable to this Agreement, unless such amendment or addition is specifically required by the California State Legislature, or is mandated by a court of competent jurisdiction. In the event of the application of such Changes in the Law, the Parties shall meet in good faith to determine the feasibility of any modification or suspension that may be necessary to comply with such Changes in the Law and to determine the effect such modification or suspension would have on the purposes and intent of this Agreement. Following the meeting between the Parties, the provisions of this Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such Changes in the Law. If such Change in the Law is permissive (as opposed to mandatory), this Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this Agreement to permit such applicability. Developers and/or City shall have the right to challenge any Changes in the Law preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

Section 8.7 Amendments to Project Approvals.

A. Generally. Project Approvals (not including amendments to this Agreement, as set forth above in Sections 8.3 through 8.5) may be amended or modified from time to time, but only at the written request of one or more Developers or with the written consent of one or more Developers, at their sole discretion. Any amendment that only affects a portion of the Property over which one or more Developers does not have an interest may be effectuated by mutual written consent of the affected Developer or Developers and the City; provided, however,

that the other Developer or Developers shall be given written notice of the proposed amendment and its substance at least thirty (30) days prior to its execution. Amendments to the Project Approvals shall be governed by the Project Approvals and by the Applicable City Regulations. City shall not request, process, or consent to any amendment to the Project Approvals that would affect the Property or the Project without Developers' prior written consent. Once approved by City, all amendments shall automatically become part of the Project Approvals, as described in Recital K of this Agreement, and vested under this Agreement.

B. Administrative Amendments of Project Approvals. Upon the request of a Developer or Developers for an amendment or modification of any Project Approvals (except for this Agreement the amendment process for which is set forth in Section 8.3 through 8.5), the City Manager or his or her designee shall determine: (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (b) whether the requested amendment or modification substantially conforms with the material terms of this Agreement and the Applicable City Regulations and may be processed administratively. If the City Manager or his or her designee finds that the requested amendment or modification is both minor and substantially conforms with the material terms of this Agreement and the Applicable City Regulations, the amendment or modification shall be determined to be an "**Administrative Project Amendment**," and the City Manager or his or her designee may approve the Administrative Project Amendment, without public notice or a public hearing. Any request of a Developer or Developers for an amendment or modification to a Project Approval that is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable City Regulations and this Agreement.

Section 8.8 Amendments and CEQA/Mitigation Measures. The City has prepared and certified the EIR for the Project, which evaluates the environmental effects of full development, operation and use of the Project, and has imposed all feasible mitigation measures, including the requirement to pay the fair share contributions set forth in Section 5.3 above, to reduce the significant environmental effects of the Project. The Parties understand that the EIR is intended to be used not only in connection with the Project Approvals, but also, to the extent legally permitted, in connection with amendments to the Project Approvals. However, the Parties acknowledge that certain amendments may legally require additional analysis under CEQA. For example, a change in the Project Approvals could require additional analysis under CEQA if the triggering conditions identified in CEQA Guidelines Section 15162 are met. In the event supplemental or additional CEQA review is required for an amendment, City shall conduct such supplemental or additional CEQA review to the scope of analysis mandated by CEQA in light of the scope of City's discretion to be exercised in connection with the amendments. Developers acknowledge that, if the City determines based upon supplemental or additional CEQA review that the amendments to the Project Approvals will result in new significant effects or substantially increase the severity of effects that were identified in the EIR, City may require additional feasible mitigation measures necessary to mitigate such impacts, provided however (except as otherwise expressly provided herein) such additional mitigation measures shall not prevent development of the Project for the uses set forth in the original Project Approvals. Developers shall comply with the mitigation measures in the MMRP, which reflect the mutually agreed-upon timing of specified improvements and Developers' pro rata share of funding, where applicable. In the event further mitigation measures are identified by such additional environmental review, City may require, and Developers shall comply with, all feasible mitigation measures necessary to substantially lessen

new or substantially more severe significant environmental impacts of the Project Approvals, which were not foreseen at the time of preparation of the EIR or execution of this Agreement. For the avoidance of any doubt, should such CEQA review of any proposed amendment to the Project Approvals result in a finding that certain mitigation measures in the MMRP are no longer called for or required due to the scope of the amendment, the MMRP may be modified to amend, or even eliminate, certain mitigation measures that are no longer required as originally contemplated.

ARTICLE 9. SUBSEQUENT APPROVALS AND IMPLEMENTATION

Section 9.1 Subsequent Approvals. Certain subsequent land use approvals, entitlements, and permits other than the Project Approvals, will be necessary or desirable for implementation of the Project (“**Subsequent Approvals**”). The Subsequent Approvals may include, without limitation, the following: major sign program approval, grading permits, building permits, tree removal permits, sewer and water connection permits, certificates of occupancy, lot line adjustments, site plans, development plans, land use plans, building plans and specifications, parcel maps and/or subdivision maps, design review, demolition permits, improvement agreements, encroachment permits, temporary special event permits, and any amendments to, or repealing of, any of the foregoing.

Section 9.2 Scope of Review of Subsequent Approvals. City shall not use its authority in considering any application for a Subsequent Approval to change the policy decisions reflected in the Project Approvals and this Agreement. Instead, the scope of review of applications for Subsequent Approvals shall be limited to review of substantial conformity with the Project Approvals, Applicable City Regulations, and compliance with CEQA. City shall not impose conditions or exactions on Subsequent Approvals that exceed the requirements of, or are otherwise inconsistent with, the Project Approvals, except as expressly permitted by this Agreement or otherwise required by Applicable City Regulations. At such time as any Subsequent Approval applicable to the Property is approved by City, then such Subsequent Approval shall become subject to all the terms and conditions of this Agreement applicable to Project Approvals and shall be incorporated therein and treated as part of the “Project Approvals” as defined in Recital K in this Agreement.

Section 9.3 Processing Applications for Subsequent Approvals.

A. Developers acknowledge that City cannot begin processing applications for Subsequent Approvals until applications are submitted by one or more Developers. Developers shall use diligent good faith efforts to provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder, and cause Developers’ planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under the Applicable City Regulations. It is the express intent of Developers and City to cooperate and diligently work to obtain any and all Subsequent Approvals.

B. Upon submission by Developers of all appropriate applications and Processing Fees for any pending Subsequent Approval, City shall, to the full extent allowed by the Applicable City Regulations, promptly and diligently, subject to City ordinances, policies and

procedures regarding hiring and contracting, commence and complete all steps necessary to act on Developers' currently pending Subsequent Approval applications including:

1. Upon the written request of the Developers, providing at Developers' sole cost and expense and subject to City's ability to obtain such services, additional staff and/or staff consultants for planning and processing of each pending Subsequent Approval application (Developers shall pay such costs at cost plus 10% for administrative costs incurred);
2. If legally required, providing notice and holding public hearings;
3. Acting on any such pending Subsequent Approval application.

and,

C. Any subsequent discretionary action or discretionary approval initiated by Developers that is not otherwise permitted by or contemplated in the Project Approvals or this Agreement or which changes the uses, intensity, density, or building height or decreases the lot area, setbacks, parking, or other entitlements permitted on the Property, except for the amendments contemplated in Section 8.7, shall be subject to the rules, regulations, ordinances, and official policies of the City then in effect at the time of application and City reserves full and complete discretion with respect to any findings to be made in connection therewith.

Section 9.4 Other Agency Subsequent Approvals; Authority of City. Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies on the Project ("**Other Agency Subsequent Approvals**"). Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Agreement in all respects when dealing with any such agency regarding the Property. City shall cooperate with Developers, at Developers' expense, to the extent appropriate and as permitted by the Applicable City Regulations, in Developers' efforts to obtain, as may be required the Other Agency Subsequent Approvals. In order to assist with City's cooperation efforts, Developers shall provide City notice of the submittal of any application for an Other Agency Subsequent Approval within ten (10) business days of such submittal and, upon request, shall promptly provide a copy of any such application to City. Nothing in this Section 9.4 shall relieve Developers of their obligation to comply with the Project Approvals, notwithstanding any conflict between the Other Agency Subsequent Approvals and the Project Approvals.

Section 9.5 Cooperation in the Event of Legal Challenge.

A. The filing of any third party lawsuit(s) against City or Developers relating to the Project Approvals, this Agreement, or construction of the Project shall not delay or stop the development, processing, or construction of the Project or approval of any Subsequent Approvals, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order.

B. City and Developers shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of the Project Approvals or this Agreement ("**Litigation Challenge**"), and the Parties shall keep each other informed of all developments relating to such defense, subject

only to confidentiality requirements that may prevent the communication of such information. For the purposes of cost-efficiency and coordination, the Parties shall first consider defending the Litigation Challenge jointly, with counsel and under terms of joint representation mutually acceptable to the City and Developers (each in its sole discretion), at the Developers' sole cost and expense. If the Parties cannot reach timely and mutual agreement on a joint counsel, and Developers continue to elect (in their sole discretion) to defend against the Litigation Challenge, then:

1. Developers shall take the lead role defending such Litigation Challenge and may, in their sole discretion, elect to be represented by the legal counsel of their choice;

2. City may, in its sole discretion, elect to be separately represented by the legal counsel of its choice, with the reasonable costs of such representation to be paid by Developers;

3. Developers 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 Challenge, all reasonable costs and expenses incurred by City in connection with the Litigation Challenge, including City's reasonable administrative, legal, and court costs, and City Attorney oversight expenses, including the retention of outside counsel; and,

4. Developers shall indemnify, defend, and hold harmless City Parties from and against any damages, attorneys' fees, or cost awards, including attorneys' fees awarded under Code of Civil Procedure Section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation.

C. Upon request by Developers, City may enter into a joint defense agreement in a form reasonably acceptable to the City Attorney to facilitate the sharing of materials and strategies related to the defense of such Litigation Challenge without waiver of attorney client privilege. Any proposed settlement of a Litigation Challenge by a Party shall be subject to the approval of the other Party, such approval not to be unreasonably withheld, conditioned, or delayed. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement or any Project Approvals, the settlement shall not become effective unless such amendment or modification is approved by City in accordance with Applicable City Regulations, and City reserves its full legislative discretion with respect thereto. If Developers opt not to contest or defend such Litigation Challenge, City shall have no obligation to do so, but shall have the right to do so at its own expense.

Section 9.6 Revision to Project. In the event of a court order issued as a result of a successful Litigation Challenge, City shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Project Approvals, and in order to avoid or minimize to the greatest extent possible any impact to the development of the Project as provided for in, and contemplated by, the Project Approvals and this Agreement, or any conflict with the Project Approvals or this Agreement or frustration of the intent or purpose of the Project Approvals or this Agreement.

Section 9.7 State, Federal or Case Law. Where any state, federal, or case law allows City to exercise any discretion or take any act with respect to that law, City shall, in an expeditious and timely manner, at the earliest possible time, exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement and take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

Section 9.8 Defense of Agreement. City, at Developers' expense, shall take all actions that are necessary or advisable to uphold the validity and enforceability of this Agreement. If this Agreement is adjudicated or determined to be invalid or unenforceable, City agrees, subject to all legal requirements, to consider modifications to this Agreement to render it valid and enforceable to the extent permitted by the Applicable City Regulations and State or Federal law.

ARTICLE 10. ASSIGNMENT, TRANSFER AND NOTICE

Section 10.1 Transfers and Assignments. Developers shall not sell, assign, or transfer (“**Transfer**”) in whole or in part any of their respective their rights, duties, and obligations under this Agreement, except for Developer Permitted Transfers as defined below, without the prior written consent of City, which consent will not be unreasonably withheld, conditioned or delayed. City may refuse to give consent to a proposed Transfer only if, in light of the proposed transferee's reputation, experience with similar projects, and/or financial resources, such transferee would not, in City's reasonable opinion, be able to perform the duties and obligations proposed to be assumed by such transferee and, if applicable, transferee's team (i.e., those hired by contract), and such determinations will be made by the City Council. Transfers subsequent to the Notice of Completion for any and all Buildings and/or Parking Structures that are included in the Transfer shall not require City consent. In no event shall the rights, duties, and obligations conferred or imposed upon Developers pursuant to this Agreement be at any time so transferred except through a Transfer of the Property and all such Transfers shall be made in accordance with the requirements of this Section 10.1. In the event of a Transfer of a portion of the Property, each Developer shall have the right to Transfer its rights, duties, and obligations under this Agreement that are applicable to the transferred portion, and retain all rights, duties, and obligations applicable to the retained portions of the Property.

A. Any Transfer made under this Section 10.1 shall be done only upon consent of the City and only after City has been afforded time to diligently review the proposed transferee within thirty (30) days after receiving notification of the proposed Transfer pursuant to Section 10.1.B. Upon Developers' request, City, at Developers' expense, shall reasonably cooperate with Developers or any Developer and any proposed transferee to allocate rights, duties, and obligations under the Project Approvals and this Agreement between the transferred Property and the retained Property.

B. Developer or Developers shall notify City in writing of any proposed Transfer at least thirty (30) days prior to completing such Transfer. At least twenty-one (21) days prior to the effective date of the Transfer, Developer or Developers shall deliver to City a draft of the proposed written assignment and assumption agreement in which the transferee expressly agrees to assume the rights and obligations under this Agreement relating to the portion of the Property being transferred. The assignment and assumption agreement shall be in substantially the form attached hereto as Exhibit I. The assignment and assumption agreement

shall address in detail whether and how each obligation and right set forth in this Agreement and in the Project Approvals shall be divided, allocated, or otherwise assigned, in whole or in part, among transferor and transferee. No later than ten (10) business days after the date the Transfer becomes effective, Developers shall deliver to City a conformed copy of the fully executed and recorded assignment and assumption agreement.

C. In the event there is more than one Transfer under this Section 10.1, the provisions of Article 10 shall apply to each successive transferee.

D. Notwithstanding any other provision of this Agreement to the contrary, each of following transfers are permitted and shall not require City consent under this Section 10 (each a “**Developer Permitted Transfer**”):

1. Any providing of the Property, or portion thereof or interest therein, as collateral for financing purposes to secure the funds necessary for construction and/or permanent financing of the Project and any transfer resulting from the exercise of rights under any such financing;

2. An assignment of this Agreement to an affiliate of any Developer, including any transfer among the Developers, where the term “**affiliate**” means an entity or person that directly or indirectly controls, is controlled by or is under common control with, a Developer, and the term “**control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of voting securities, by contract, or otherwise;

3. Dedications and grants of easements and rights of way required in accordance with the Project Approvals;

4. Transfers of common areas to a property owners association;

5. Transfers by a Mortgagee following acquisition of the Property by foreclosure or deed in lieu of foreclosure; or

6. Any leasing activity.

Section 10.2 Release upon Transfer. Upon the Transfer of any Developer’s rights and interests under this Agreement pursuant to this Article 10, such Developer shall automatically be released from its obligations and liabilities under this Agreement with respect to that portion of the Property transferred, and any subsequent default or breach with respect to the transferred rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Agreement, provided that such Developer has provided to City written Notice of such Transfer, and the transferee executes and delivers to City a written agreement in accordance with Section 10.1 above. Upon any Transfer of any portion of the Property and the express assumption of Developer’s obligations under this Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee

and shall not cancel or diminish in any way Developers' rights hereunder with respect to any portion of the Property not owned by such transferee. The transferor and the transferee shall each be solely responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferor/transferee, and any amendment to this Agreement between City and a transferor or a transferee shall only affect the portion of the Property owned by such transferor or transferee. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 13.4 below, nor shall such failure negate, modify, or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.

ARTICLE 11. DEFAULT; REMEDIES; TERMINATION

Section 11.1 Breach and Default. Subject to extensions of time under Section 3.2.B or by mutual consent in writing, failure by a Party to perform any material action or covenant required by this Agreement (not including any failure by Developers to perform any term or provision of any other Project Approval) within thirty (30) days following receipt of written Notice from the other Party specifying the failure shall constitute a "**Default**" under this Agreement; provided, however, that if the failure to perform cannot be reasonably cured within such thirty (30) day period, a Party shall be allowed additional time as is reasonably necessary to cure the failure so long as such Party commences to cure the failure within the thirty (30) day period and thereafter diligently prosecutes the cure to completion. Any Notice of Default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Default, all facts constituting evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Agreement. The waiver by either Party of any Default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement, including the right to terminate this Agreement as set forth in Section 11.2 below. The provisions of this Article 11 shall be subject to the qualification that if the failure or default relates only to a single Developer, and not all Developers together or the entire Project or the entire Property, then the procedures and remedies described in this Agreement shall apply only to the defaulting Developer and shall not apply to the non-defaulting Developer or its portion of the Property or Project. Notwithstanding anything to the contrary contained in this Agreement, each Developer's liability hereunder shall be severable and not joint, and each Developer shall have liability hereunder with respect to any portion of the Property owned by it and only in connection with matters arising during the term of such Developer's ownership of such portion of the Property.

A. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in Default for the following:

1. Termination of this Agreement;
2. Institution of legal proceedings with respect thereto; or
3. Issuance of any approval with respect to the Project.

Section 11.2 Termination. In the event of a Default by a Party, the non-defaulting Party shall have the right to initiate legal proceedings pursuant to Section 11.3 and/or terminate this Agreement upon giving Notice of Intent to Terminate pursuant to Government Code Section 65868. Following Notice of Intent to Terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code Section 65867 and Section 6.1.B above. Following consideration of the evidence presented in said review before the City Council, a Party alleging Default by another Party may give written Notice of termination of this Agreement to the other Party. Termination of this Agreement shall be subject to the provisions of Section 11.7 below. In the event that this Agreement is terminated pursuant to this Section 11.2 and the validity of such termination is challenged in a legal proceeding that results in a final decision that such termination was improper, then this Agreement shall immediately be reinstated as though it had never been terminated.

Section 11.3 Legal Actions.

A. Institution of Legal Actions. In addition to any other rights or remedies, a Party may institute legal action to cure, correct, or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the terms of this Agreement. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of San Mateo, except for actions that include claims in which the Federal District Court for the Northern District of the State of California has original jurisdiction, in which case the Northern District of the State of California shall be the proper venue.

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

Section 11.4 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party, except as otherwise expressly provided herein.

Section 11.5 No Damages. In no event shall a Party, or its boards, commissions, members, officers, agents, or employees, be liable in damages for any Default under this Agreement, it being expressly understood and agreed that the sole legal remedy available to a Party for a breach or violation of this Agreement by another Party shall be an action in mandamus, specific performance, or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement. This limitation on damages shall not preclude actions by City to enforce payments of monies or the performance of obligations requiring an obligation of money from any Developer under the terms of this Agreement including,

but not limited to, obligations to pay attorneys' fees and obligations to advance monies or pay funds under Article 2 (Public Benefits). In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Agreement by the other Party.

Section 11.6 Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which is not provided for by this Agreement or Applicable City Regulations, a Party shall, at the request of another Party, meet with designated representatives of the requesting Party promptly following its request. The Parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this Section 11.6 shall in any way be interpreted as requiring that Developers and City reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developers unless expressly agreed to in writing by the Parties to such meetings.

Section 11.7 Surviving Provisions. In the event this Agreement expires or is terminated, neither Party shall have any further rights or obligations hereunder, except for those obligations set forth in Section 9.5 (Cooperation in the Event of Legal Challenge), or expressly set forth herein as surviving the termination of this Agreement. The termination or expiration of this Agreement shall not affect the validity of the Project Approvals. In the event litigation is timely instituted, and a final judgment is obtained, which invalidates in its entirety this Agreement, neither Party shall have any obligations whatsoever under this Agreement, except for those obligations which by their terms survive termination hereof.

Section 11.8 California Claims Act. Compliance with the procedures set forth in this Article 11 shall be deemed full compliance with the requirements of the California Claims Act (Government Code Section 900 et seq.) including, but not limited to, the Notice of an event of Default hereunder constituting full compliance with the requirements of Government Code Section 910.

ARTICLE 12. INSURANCE AND INDEMNITY

Section 12.1 Insurance Requirements. In connection with development of the Project, Developers shall procure and maintain, or cause its contractor(s) to procure and maintain a commercial general liability policy in an amount not less than Five Million Dollars (\$5,000,000) combined single limit, including contractual liability together with a comprehensive automobile liability policy in the amount of Two Million Dollars (\$2,000,000), combined single limit. Such policy or policies shall be written on an occurrence form, so long as such form of policy is then commonly available in the commercial insurance marketplace. Developers' insurance shall be placed with insurers with a current A.M. Best's rating of no less than A-:VII or a rating otherwise approved by the City in its sole discretion. Developers shall furnish at City's request appropriate certificate(s) of insurance evidencing the insurance coverage required by Developers hereunder, and City Parties shall be named as additional insured parties under the policies

required hereunder. The certificate of insurance shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination (ten (10) days advance notice in the case of cancellation for nonpayment of premiums) where the insurance carrier provides such notice to the Developers. Coverage provided hereunder by Developers shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City. Developers understand that City may change these insurance requirements upon, and as a condition of, approval of an Extended Term.

Section 12.2 Indemnification. Each Developer shall defend (with counsel reasonably acceptable to City), indemnify, assume all responsibility for, and hold harmless City, its elected officials, executives, directors, agents, employees, volunteers, and other representatives (“**City Parties**”), from and against, any and all claims, demands, damages, liabilities, lawsuits, losses, expenses, and obligations, including interest, penalties, attorneys’ fees and costs, and all amounts paid in the investigation, defense, or settlement of the foregoing (“**Claims**”) arising directly or indirectly from the work to construct the Project, including the design, development, and construction thereof and including the design, development, and construction of any improvements requiring any City-sponsored or City-requested approvals from the California Department of Transportation in connection with the Project, whether such Claims shall accrue or be discovered before or after expiration or termination of this Agreement. Developers’ indemnity obligations under this Section 12.2 shall not extend to claims occasioned by the negligence or willful misconduct of City Parties. Each Developer’s liability hereunder shall be severable and not joint, and each Developer shall have liability hereunder with respect to any portion of the Property owned by it and only in connection with matters arising during the term of such Developer’s ownership of such portion of the Property. The provisions of this Section 12.2 shall survive for ten (10) years after substantial completion of any improvement, where the term “**substantial completion**” has the meaning set out in California Code of Civil Procedures section 337.15.

ARTICLE 13. MISCELLANEOUS PROVISIONS

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

Section 13.2 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

Section 13.3 Construction. Each reference herein to this Agreement or any of the Project Approvals (including any amendments or Subsequent Approvals) shall be deemed to refer to the Agreement and the Project Approvals as they may be amended from time to time in accordance with this Agreement, whether or not the particular reference refers to such possible amendment. Section headings in this Agreement are for convenience only and are not intended to be used in

interpreting or construing the terms, covenants, or conditions of this Agreement. This Agreement has been reviewed and revised by legal counsel for City and Developers, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. Unless the context clearly requires otherwise, 1) the plural and singular numbers shall each be deemed to include the other; 2) the masculine, feminine, and neuter genders shall each be deemed to include the others; 3) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive; 4) “or” is not exclusive; 5) “include,” “includes” and “including” are not limiting and shall be construed as if followed by the words “without limitation;” and 6) “days” means calendar days unless specifically provided otherwise.

Section 13.4 Covenants Running with the Land. Except as otherwise more specifically provided in this Agreement, this Agreement and all of its provisions, rights, powers, standards, terms, covenants, and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code Section 65868.5.

Section 13.5 Notices. Any notice or communication required hereunder between City and Developers (“**Notice**”) must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. Courtesy notice may be given by email but shall not constitute Notice under this Agreement. If personally delivered, a Notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by registered or certified mail, such Notice shall be deemed to have been given and received on the first to occur of (A) actual receipt by any of the addressees designated below as the Party to whom Notices are to be sent, or (B) five (5) days after a registered or certified letter containing such Notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a Notice shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written Notice to the other Parties hereto, designate any other address in substitution of the address to which such Notice shall be given. Such Notices shall be given to the Parties at their addresses set forth below:

To City: City of Burlingame
501 Primrose Road
Burlingame, CA 94010
Attn: City Manager

With a copy to: City Attorney’s Office
501 Primrose Road
Burlingame, CA 94010
Attn: City Attorney

and:

To Developers: DW I, DW II, DW II A, DW II B, and DW III
c/o Divco West
301 Howard Street, Suite 2100
San Francisco, CA 94105
Attn: General Counsel

With a copy to: DW I, DW II, DW II A, DW II B, and DW III
c/o Divco West Real Estate Asset Management
301 Howard Street, Suite 2100
San Francisco, CA 94105
Attn: Development Manager and Asset Manager
(two separate notices)

Section 13.6. Counterparts and Exhibits; Entire Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original. This Agreement, together with the Project Approvals and attached Exhibits, constitutes the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter hereof.

Section 13.7 Recordation of Agreement. Pursuant to California Government Code Section 65868.5, no later than ten (10) days after City and Developers enter into this Agreement, the City Clerk shall record this Agreement in the Official Records of the County of San Mateo. Thereafter, if this Agreement is terminated, modified, or amended, the City Clerk shall record notice of such action in the Official Records of the County of San Mateo.

Section 13.8 No Joint Venture or Partnership. It is specifically understood and agreed to by and between the Parties hereto that:

- A. The subject development is a private development;
- B. City has no interest or responsibilities for, or duty to, third parties concerning any public improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals;
- C. Developers shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developers under the Project Approvals, this Agreement, the Subsequent Approvals, and Applicable City Regulations; and
- D. City and Developers hereby renounce the existence of any form of agency relationship, joint venture, or partnership between City and Developers and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developers.

Section 13.9 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by the other Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act by the other Party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in the future.

Section 13.10 City Approvals and Actions. Whenever reference is made herein to an action or approval to be undertaken by City, the City Manager or their designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

Section 13.11 Estoppel Certificates. A Party may, at any time during the Term of this Agreement, and from time to time, deliver written Notice to another Party requesting such Party to certify in writing that, to the best of knowledge of the certifying Party, the following: 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 if amended, identifying the amendments; 3) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults; 4) if the responding Party is the City, confirmation that as of the last periodic review of the Project as described in Section 6.1, that the Developer Party is in good faith compliance with the terms of this Agreement or that the Developer Party was not in good faith compliance with the terms of this Agreement at the time of review; and, 5) any other information reasonably requested. The requesting Party shall be responsible for all reasonable costs incurred by the Party from whom such certification is requested and shall reimburse such costs within thirty (30) days of receiving the certifying Party's request for reimbursement. The Party receiving a request hereunder shall execute and return such certificate within twenty (20) days following the receipt thereof. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that this Agreement is in full force and effect and no modification or default exists. The City Manager shall have the right to execute any certificate requested by Developers hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

Section 13.12 No Third Party Beneficiaries. City and Developers hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

Section 13.13 Further Actions and Instruments. Each Party to this Agreement shall cooperate with and provide reasonable assistance to the other Parties and take all actions necessary to ensure that the Parties receive the benefits of this Agreement, subject to satisfaction of the conditions of this Agreement. Upon the request of any Party, the other Parties shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement.

Section 13.14 Limitation on Liability. In no event shall any partner, officer, director, member, shareholder, employee, manager, representative, or agent of Developers or any manager or member of Developers be personally liable for any breach of this Agreement by any Developer, or for any amount which may become due to City under the terms of this Agreement; or any elected or appointed official, member, officer, agent, or employee of City be personally liable for any breach of this Agreement by City or for any amount which may become due to Developers under the terms of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

CITY:

CITY OF BURLINGAME, a municipal corporation

By: _____
Lisa Goldman, City Manager
[signature must be notarized]

APPROVED AS TO FORM:

By: _____
Michael Guina, City Attorney

ATTEST:

By: _____
Meaghan Hassel-Shearer, City Clerk

DEVELOPERS:

DW BURLINGAME I OWNER, LLC, a Delaware limited liability company

By: _____

[signature must be notarized]

DW BURLINGAME II OWNER, LLC, a
Delaware limited liability company

By: _____

[signature must be notarized]

DW BURLINGAME II OWNER A, LLC, a
Delaware limited liability company

By: _____

[signature must be notarized]

DW BURLINGAME II OWNER B, LLC, a
Delaware limited liability company

By: _____

[signature must be notarized]

DW BURLINGAME III OWNER, LLC, a
Delaware limited liability company

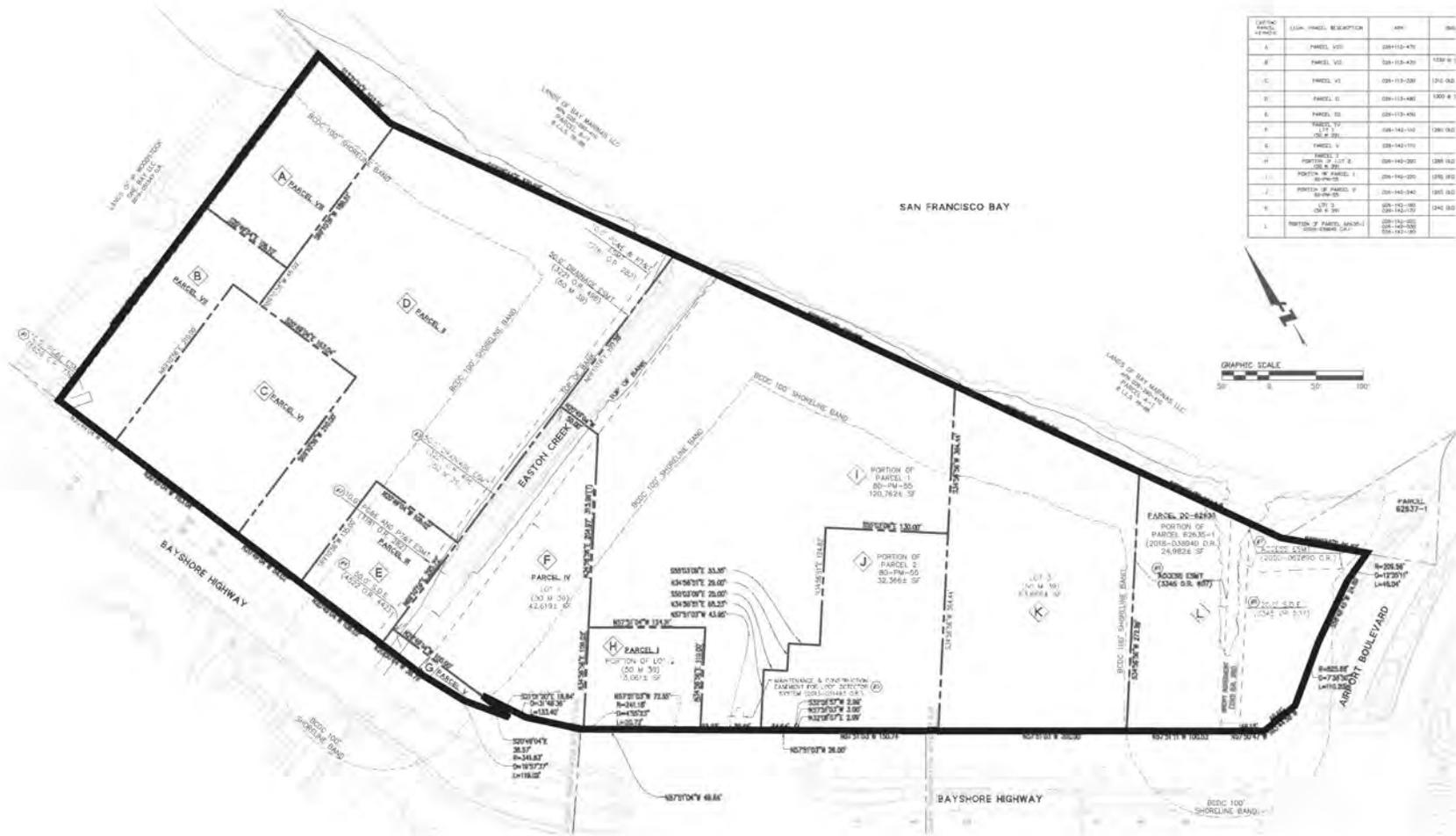
By: _____

[signature must be notarized]

EXHIBIT A

Property Map

Exhibit A



Property Map

EXHIBIT B

Legal Description of Property
Records

EXHIBIT B

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF BURLINGAME, IN THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

TRACT A:

Being all of Parcel 62635-1 described in the Grant Deed to the San Mateo County Transportation Authority, recorded May 16, 2018 under Recorder's Series Number 2018-038040 CONF, Official Records of said County, together with a portion of Parcel 62636-1 described in the Quitclaim Deed to the San Mateo County Transportation Authority, a Public Agency, recorded October 23, 2013 under Recorder's Series Number 2013-149170, Official Records of said County, more particularly described as follows:

PARCEL DD-62635

BEGINNING at the most Westerly corner of said Parcel 62635-1; thence along the Northwesternly line of last said Parcel and the Northeasterly lines of said Parcels the following three (3) courses,

1. North 34°56'59" East 272.94 feet,
2. South 32°48'23" East 164.63 feet (at 129.50 feet lies the most Easterly corner of said Parcel 62635-1),
3. South 48°40'12" East 95.86 feet; thence departing said Northeasterly line,
4. Southwesterly, along the arc of a non-tangent curve to the left, concave to the Southeast, the center of which bears South 18°36'01" East 209.55 feet, through a central angle of 12°35'11", an arc distance of 46.03 feet; thence,
5. South 58°48'48" West 24.89 feet; thence
6. Southwesterly, along the arc of a curve to the left, concave to the Southeast, having a radius of 825.62 feet, through a central angle of 07°38'50", an arc distance of 110.19 feet to a point of cusp; thence,
7. South 83°45'48" West 40.84 feet to a point on the Southwesterly line of said Parcel 62636-1; thence along the Southwesterly lines of said Parcels,
8. North 57°51'05" West 146.21 feet (at 26.17 feet lies the most Southerly corner of said Parcel 62635-1) to the POINT OF BEGINNING.

Containing 46,181 square feet (1.060 acres), more or less.

APN: 026-142-020, 026-142-180 and 026-142-030

TRACT B:

LOT 3, AS SHOWN ON THAT CERTAIN MAP ENTITLED "BEARINT INDUSTRIAL PARK BURLINGAME, SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA, ON MARCH 11, 1959 IN BOOK 50 OF MAPS AT PAGE(S) 39.

APN: 026-142-160 and 026-142-170

TRACT C:

PARCEL 2, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP 12-01 BEING A RESUBDIVISION OF LOT 4 AS SHOWN ON THAT CERTAIN MAP ENTITLED 'BEARINT INDUSTRIAL PARK, BURLINGAME, SAN MATEO COUNTY, CALIFORNIA' FILED MARCH 11, 1959 IN VOLUME 50 OF MAPS AT PAGE 39, SAN MATEO COUNTY RECORDS, CITY OF BURLINGAME, SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA ON DECEMBER 21, 2012 IN BOOK 80 OF PARCEL MAPS AT PAGES 55 AND 56.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF AS GRANTED TO SAN MATEO COUNTY TRANSPORTATION AUTHORITY, A PUBLIC AGENCY BY GRANT DEED DATED FEBRUARY 13, 2013 AND RECORDED FEBRUARY 27, 2013 AS INSTRUMENT NO. 2013-031492 SAN MATEO COUNTY RECORDS.

APN: 026-142-240

TRACT D:

Parcel ONE:

Parcel 1 of Parcel Map 12-01, filed December 21, 2012 in the office of the Recorder of San Mateo County in Volume 80 of Parcels Maps, at Pages 55 and 56.

Excepting therefrom all those portions conveyed to San Mateo County Transportation Authority, a Public Agency by Grant Deed recorded February 27, 2013, as Instrument No. 2013-31492, of Official Records.

APN: 026-142-220

Parcel Two:

A reciprocal, non-exclusive easement for the purposes of (i) maintenance, repair and replacement of all existing utility lines in, on, over, under, across and through the areas where such lines currently exist and (ii) fire apparatus access and vehicular and pedestrian ingress, egress, access in, on, over, under, across and through the currently paved driving areas lying within Parcel 2 of Parcel Map 12-01, filed December 21, 2012 in the Office of the Recorder of San Mateo County in Volume 80 of Parcel Maps, at Pages 55 and 56, pursuant to that certain Reciprocal Easement

Agreement by and between Terrapin 1250 Bayshore Property Owner, LLC, a Delaware limited liability company, and Max Acquisition, LLC, a California limited liability company, recorded November 5, 2015 as Document No. 2015-117144.

Parcel Three:

A reciprocal, non-exclusive easement for the purposes of vehicular parking in parking areas lying within Parcel 2 of Parcel Maps 12-01, filed December 21, 2012 in the Office of the Recorder of San Mateo County in Volume 80 of Parcel Maps, at Pages 55 and 56, pursuant to that certain Reciprocal Easement Agreement by and between Terrapin 1250 Bayshore Property Owner, LLC, a Delaware limited liability company, and Max Acquisition, LLC, a California limited liability company, recorded November 5, 2015 as Document No. 2015-117144.

Parcel Four:

An easement to use, maintain and repair the monument signage lying within Parcel 2 of Parcel Map 12-01, filed December 21, 2012 in the Office of the Recorder of San Mateo County in Volume 80 of Parcels Maps, at Pages 55 and 56, pursuant to that certain Reciprocal Easement Agreement by and between Terrapin 1250 Bayshore Property Owner, LLC, a Delaware limited liability company, and Max Acquisition, LLC, a California limited liability company, recorded November 5, 2015 as Document No. 2015-117144.

Parcel Five:

A non-exclusive easement to access, use, inspect, maintain, repair and replace the existing sewer, water, electrical gas and other utilities serving Parcel 1 which are currently lying within Parcel 2 of Parcel Map 12-01, filed December 21, 2012 in the Office of the Recorder of San Mateo County in Volume 80 of Parcels Maps, at Pages 55 and 56, pursuant to that certain Reciprocal Easement Agreement by and between Terrapin 1250 Bayshore Investors, LLC, a Delaware limited liability company, and Max Acquisition, LLC, a California limited liability company, recorded November 5, 2015 as Document No. 2015-117144.

TRACT E:

PARCEL I:

LOT 2, AS SHOWN ON THAT CERTAIN MAP ENTITLED "BEARINT INDUSTRIAL PARK, BURLINGAME, SAN MATEO COUNTY, CALIFORNIA", FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA, ON MARCH 11, 1959 IN BOOK 50 OF MAPS, AT PAGE 39.

EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED IN THE GRANT DEED TO SAN MATEO TRANSPORTATION AUTHORITY, A PUBLIC AGENCY RECORDED NOVEMBER 12, 2013, INSTRUMENT NO. 2013-155819, SAN MATEO COUNTY RECORDS.

JPN: 026-014-142-07A

APN: 026-142-200

PARCEL II:

BEGINNING AT A POINT WHICH IS ON THE NORTHWESTERLY BOUNDARY LINE OF LOT 1, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "BEARINT INDUSTRIAL PARK, BURLINGAME, SAN MATEO COUNTY, CALIFORNIA," WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON MARCH 11, 1959, IN BOOK 50 OF MAPS, AT PAGE 39, SAID POINT OF BEGINNING BEING NORTH 67° 58' 20" EAST 114.50 FEET FROM THE NORTHWESTERLY CORNER OF SAID LOT 1; THENCE ALONG THE NORTHWESTERLY BOUNDARY LINE OF SAID BEARINT INDUSTRIAL PARK NORTH 67° 58' 20" EAST 380.50 FEET TO THE MOST NORTHERLY CORNER OF LOT 4 OF SAID BEARINT INDUSTRIAL PARK, AND ALSO BEING THE SOUTHEASTERLY TERMINUS OF THAT CERTAIN BOUNDARY AGREEMENT BETWEEN WESTBAY COMMUNITY ASSOCIATION, A GENERAL PARTNERSHIP, AND ANZA SHAREHOLDERS LIQUIDATION TRUST, RECORDED JULY 25, 1977, IN BOOK 7554 OF OFFICIAL RECORDS, AT PAGE 129 (FILE NO. 51992-AL); THENCE ALONG SAID LAST MENTIONED LINE, BEING THE NORTHWESTERLY PROLONGATION OF THE NORTHEASTERLY LINE OF SAID LOT 4, NORTH 32° 48' 16" (THE NORTHEASTERLY LINE OF SAID LOT 4 IS SHOWN ON SAID MAP AS NORTH 34° 00' 40" WEST), 330.90 FEET; THENCE SOUTH 67° 58' 20" WEST 237.51 FEET; THENCE SOUTH 22° 01' 40" EAST 128.00 FEET; THENCE SOUTH 67° 58' 20" WEST 210.00 FEET TO THE EASTERLY LINE OF BAYSHORE HIGHWAY; THENCE ALONG SAID EASTERLY LINE OF BAYSHORE HIGHWAY SOUTH 22° 01' 40" EAST 84.00 FEET TO A POINT; THENCE LEAVING SAID EASTERLY LINE OF BAYSHORE HIGHWAY NORTH 67° 58' 20" EAST 135.00 FEET TO A POINT; THENCE SOUTH 22° 01' 40" EAST 108.00 FEET TO THE POINT OF BEGINNING.

JPN: 026-011-113-21A

APN: 026-113-480

PARCEL III:

BEGINNING AT THE NORTHWESTERLY CORNER OF LOT 1, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "BEARINT INDUSTRIAL PARK, BURLINGAME, SAN MATEO COUNTY, CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON MARCH 11, 1959, IN BOOK 50 OF MAPS, AT PAGE 39; SAID POINT OF BEGINNING ALSO BEING ON THE ABANDONED EASTERLY LINE OF BAYSHORE HIGHWAY; THENCE FROM SAID POINT OF BEGINNING, ALSO THE NORTHWESTERLY LINE OF SAID LOT, NORTH 67° 58' 20" EAST, 114.50 FEET TO A POINT; THENCE LEAVING SAID LINE OF LOT 1, NORTH 22° 01' 40" WEST, 108.00 FEET; THENCE SOUTH 67° 58' 20" WEST, 135.00 FEET TO THE EXISTING EASTERLY LINE OF BAYSHORE HIGHWAY; THENCE ALONG SAID EXISTING LINE OF BAYSHORE HIGHWAY, SOUTH 22° 01' 40" EAST, 108.00 FEET TO A POINT; THENCE NORTH 67° 58' 20" EAST, 20.50 FEET TO THE POINT OF BEGINNING.

JPN: 026-11-113-21A; 36A
APN: 026-113-450

PARCEL IV:

LOT 1, AS DESIGNATED ON THAT CERTAIN MAP ENTITLED, "BEARINT INDUSTRIAL PARK, BURLINGAME, SAN MATEO COUNTY, CALIFORNIA," WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON MARCH 11, 1959, IN BOOK 50 OF MAPS, AT PAGE 39.

JPN: PORTION 026-14-142-11A
APN: PORTION 026-142-110

PARCEL V:

BEGINNING AT THE MOST WESTERLY CORNER OF LOT 1, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "BEARINT INDUSTRIAL PARK, BURLINGAME, SAN MATEO COUNTY, CALIFORNIA," WHICH MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN MATEO COUNTY, STATE OF CALIFORNIA, ON MARCH 11, 1959, IN BOOK 50 OF MAPS, AT PAGE 39; THENCE FROM SAID POINT OF BEGINNING ALONG THE SOUTHWESTERLY BOUNDARY LINE OF SAID LOT 1 SOUTH 22° 01' EAST 100 FEET; THENCE LEAVING SAID LINE SOUTH 22° 01' EAST 36.57 FEET; THENCE SOUTH ALONG THE ARC OF A TANGENT CURVE TO THE LEFT WITH A RADIUS OF 2637.5 FEET, THROUGH A CENTRAL ANGLE OF 0° 24' 43", A DISTANCE OF 18.96 FEET TO A POINT; THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE TO THE RIGHT, THE CENTER OF WHICH BEARS NORTH 48° 00' 03" EAST FROM THE LAST MENTIONED POINT, SAID CURVE HAVING A RADIUS OF 341.63 FEET AND A CENTRAL ANGLE OF 19° 58' 57", A DISTANCE OF 119.15 FEET; THENCE NORTH 22° 02' WEST 38.79 FEET; THENCE NORTH 67° 59' EAST 20.5 FEET TO THE POINT OF BEGINNING.

JPN: PORTION 026-14-142-11A
APN: PORTION 026-142-110

PARCEL VI:

BEGINNING AT A POINT WHICH IS ON THE NORTHEASTERLY RIGHT OF WAY LINE OF BAYSHORE HIGHWAY, SAID POINT OF BEGINNING BEING SOUTH 67° 58' 20" WEST 20.50 FEET AND NORTH 32° 01' 40" WEST 192.00 FEET FROM THE NORTHWESTERLY CORNER OF LOT 1, AS DESIGNATED ON THE MAP ENTITLED, BEARINT INDUSTRIAL PARK, BURLINGAME, SAN MATEO COUNTY, CALIFORNIA, WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON MARCH 11, 1959, IN BOOK 50 OF MAPS, AT PAGE 39; THENCE FROM SAID POINT OF BEGINNING ALONG THE SAID NORTHEASTERLY LINE OF BAYSHORE HIGHWAY, NORTH 22° 01' 40" WEST 163.00 FEET TO A POINT; THENCE LEAVING SAID NORTHEASTERLY LINE OF BAYSHORE HIGHWAY NORTH 67° 58' 20" EAST 210.00 FEET; THENCE SOUTH 22° 01' 40" EAST

163.00 FEET; THENCE SOUTH 67° 58' 20" WEST 210.00 FEET TO THE POINT OF BEGINNING.

JPN: 026-011-113-33A

APN: 026-113-330

PARCEL VII:

BEGINNING AT A POINT ON THE NORTHEASTERLY RIGHT OF WAY LINE OF BAYSHORE HIGHWAY, SAID POINT OF BEGINNING BEING SOUTH 67° 58' 20" WEST 20.50 FEET AND NORTH 22° 01' 20" WEST 426.00 FEET FROM THE MOST WESTERLY CORNER OF LOT 1, AS SAID LOT IS DESIGNATED ON THE MAP ENTITLED "BEARINT INDUSTRIAL PARK, BURLINGAME, SAN MATEO COUNTY, CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON MARCH 11, 1959, IN BOOK 50 OF MAPS AT PAGE 39; THENCE FROM SAID POINT OF BEGINNING, LEAVING SAID POINT OF BEGINNING, LEAVING SAID NORTHEASTERLY RIGHT OF WAY LINE OF BAYSHORE HIGHWAY NORTH 67° 58' 20" EAST 258.00 FEET; THENCE SOUTH 22° 01' 40" EAST 106.00 FEET; THENCE SOUTH 67° 58' 20" WEST 48.00 FEET; THENCE NORTH 22° 01' 40" WEST 35.00 FEET; THENCE SOUTH 67° 58' 20" WEST 210.00 FEET TO THE SAID NORTHEASTERLY RIGHT OF WAY LINE OF BAYSHORE HIGHWAY; THENCE ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE OF BAYSHORE HIGHWAY NORTH 22° 01' 40" WEST 71.00 FEET TO THE POINT OF BEGINNING.

JPN: PORTION 026-11-113-34A; 37

APN: PORTION 026-113-470

PARCEL VIII:

BEGINNING AT A POINT NORTH 67° 58' 20" EAST 237.50 FEET AND NORTH 22° 01' 40" WEST 426.00 FEET FROM THE MOST WESTERLY CORNER OF LOT #1, AS SAID LOT IS DESIGNATED ON THE MAP ENTITLED, "BEARINT INDUSTRIAL PARK, BURLINGAME, SAN MATEO COUNTY, CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON MARCH 11, 1959, IN BOOK 50 OF MAPS AT PAGE 39; THENCE FROM SAID POINT OF BEGINNING NORTH 67° 58' 20" EAST 202.00 FEET; THENCE SOUTH 14° 45' 24" EAST 104.00 FEET; THENCE SOUTH 34° 01' 20" EAST 2.86 FEET; THENCE SOUTH 67° 58' 20" WEST 189.51 FEET; THENCE NORTH 22° 01' 40" WEST 106.00 FEET TO THE POINT OF BEGINNING.

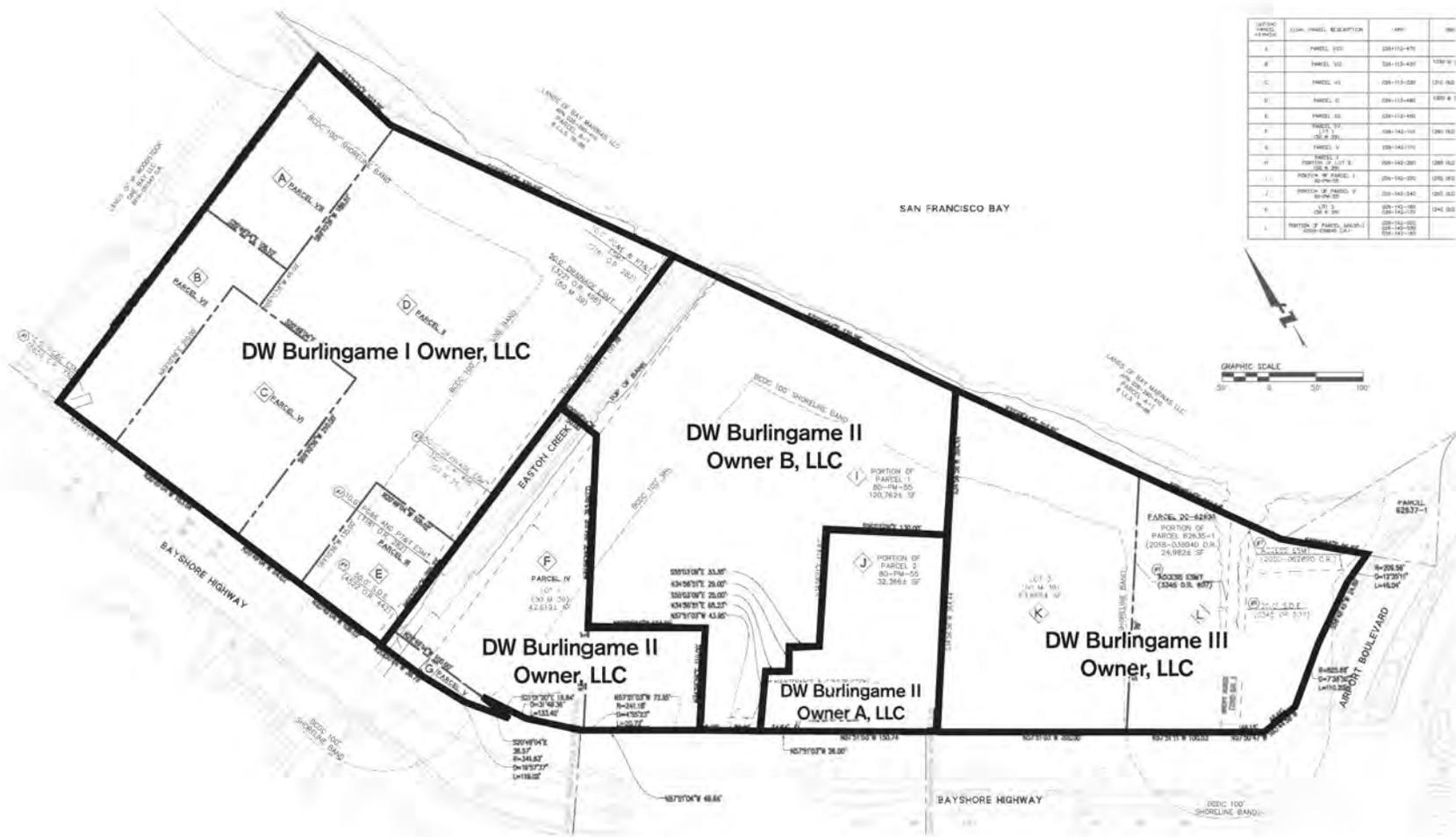
JPN: PORTION 026-11-113-34A; 37

APN: PORTION 026-113-470

EXHIBIT C

Pre-Vesting Tentative Map
Property Ownership

Exhibit C

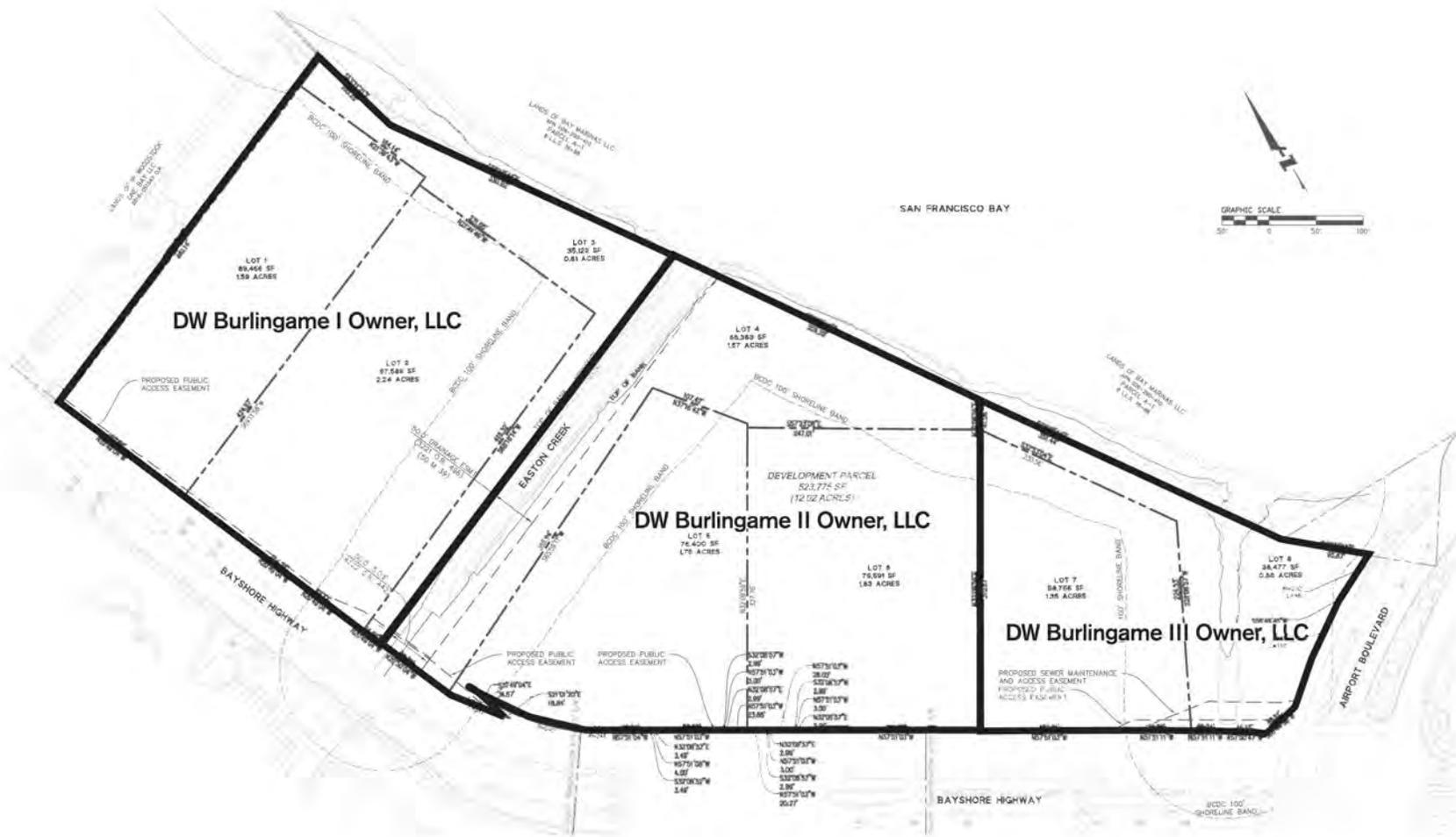


Pre-Vesting Tentative Map Property Ownership

EXHIBIT D

Post-Vesting Tentative Map
Property Ownership

Exhibit D

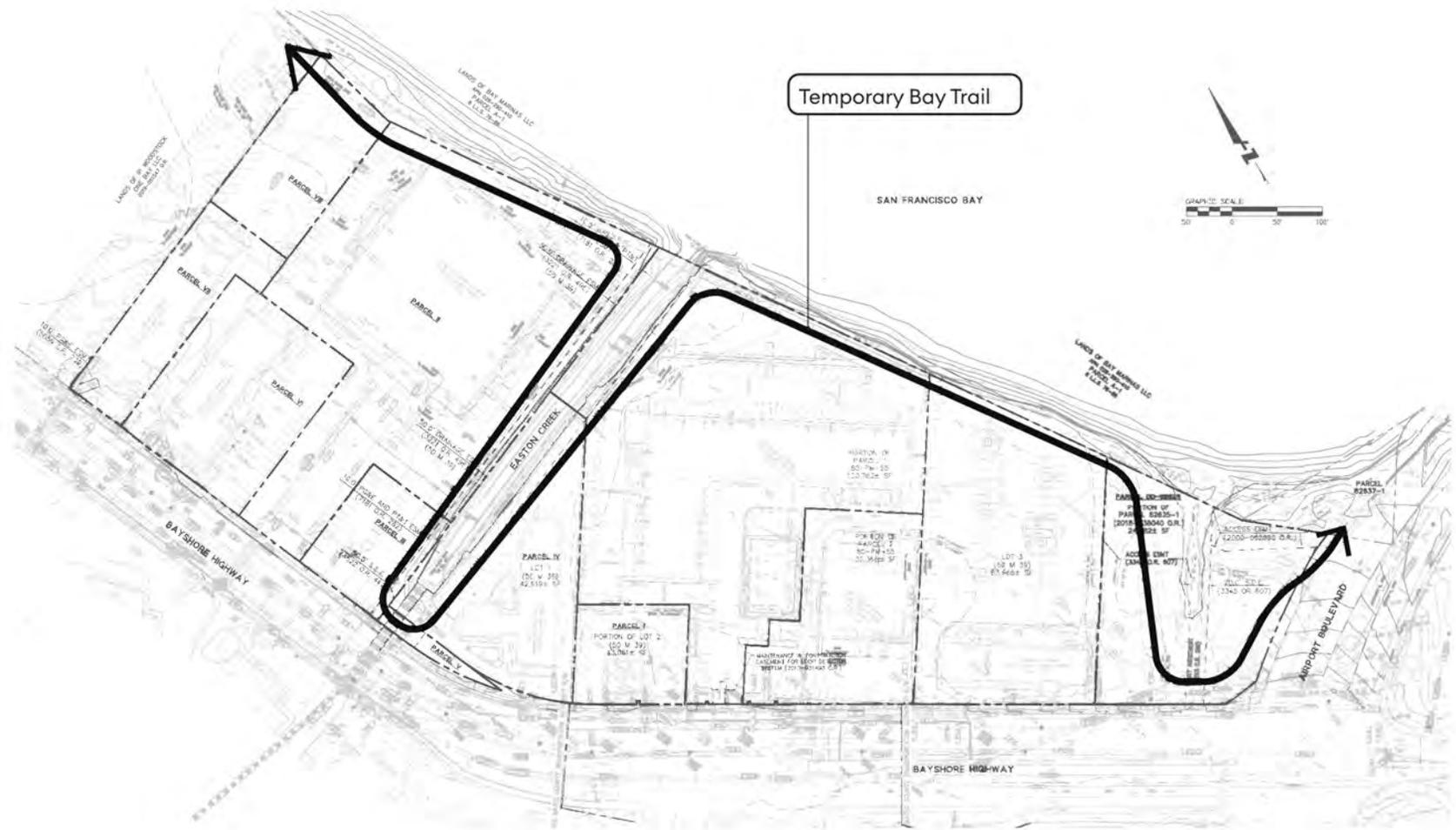


Post-Vesting Tentative Map Property Ownership

EXHIBIT E

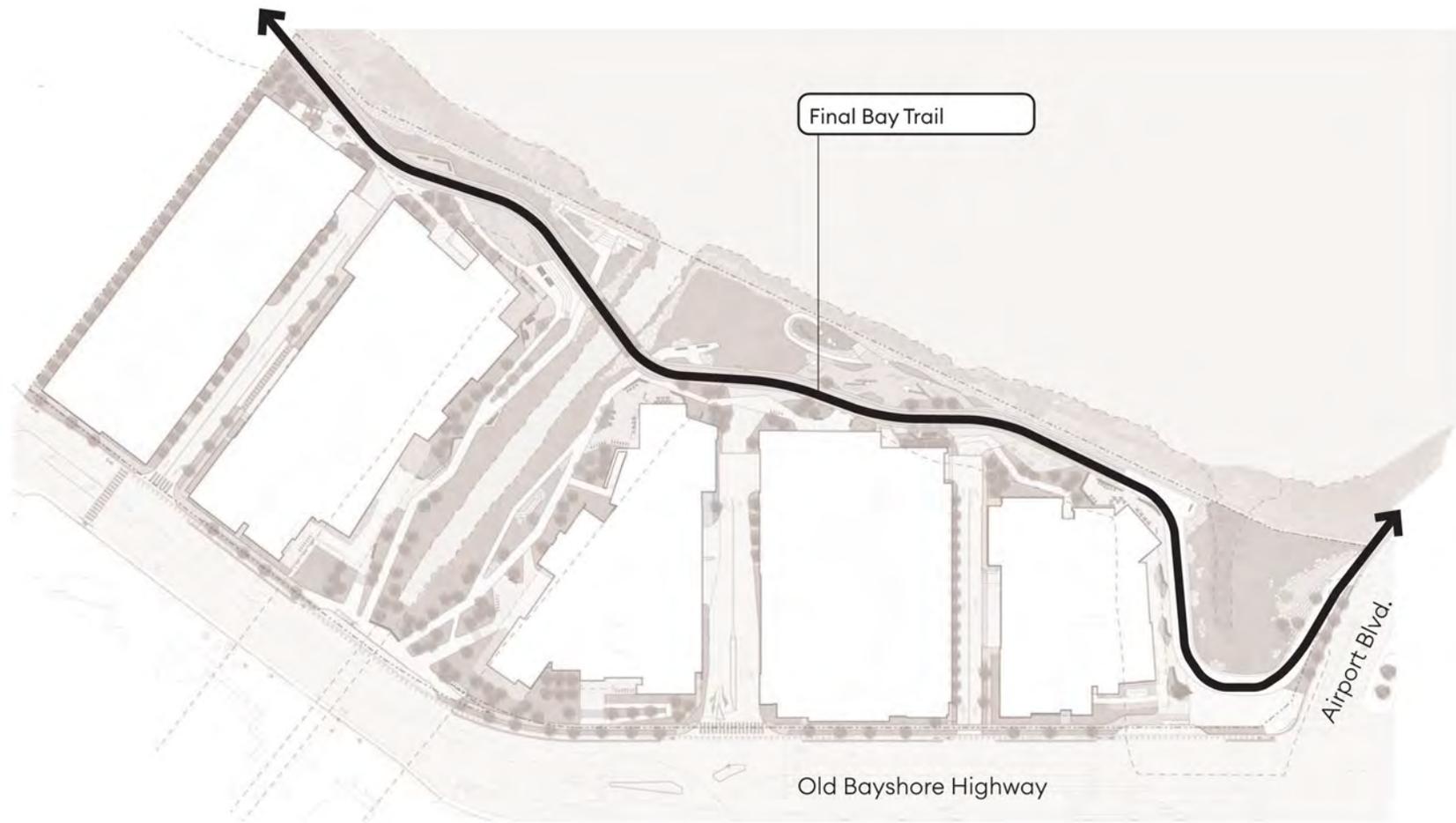
Temporary and Final Bay Trail Improvements

Exhibit E.1



Temporary Bay Trail

Exhibit E.2

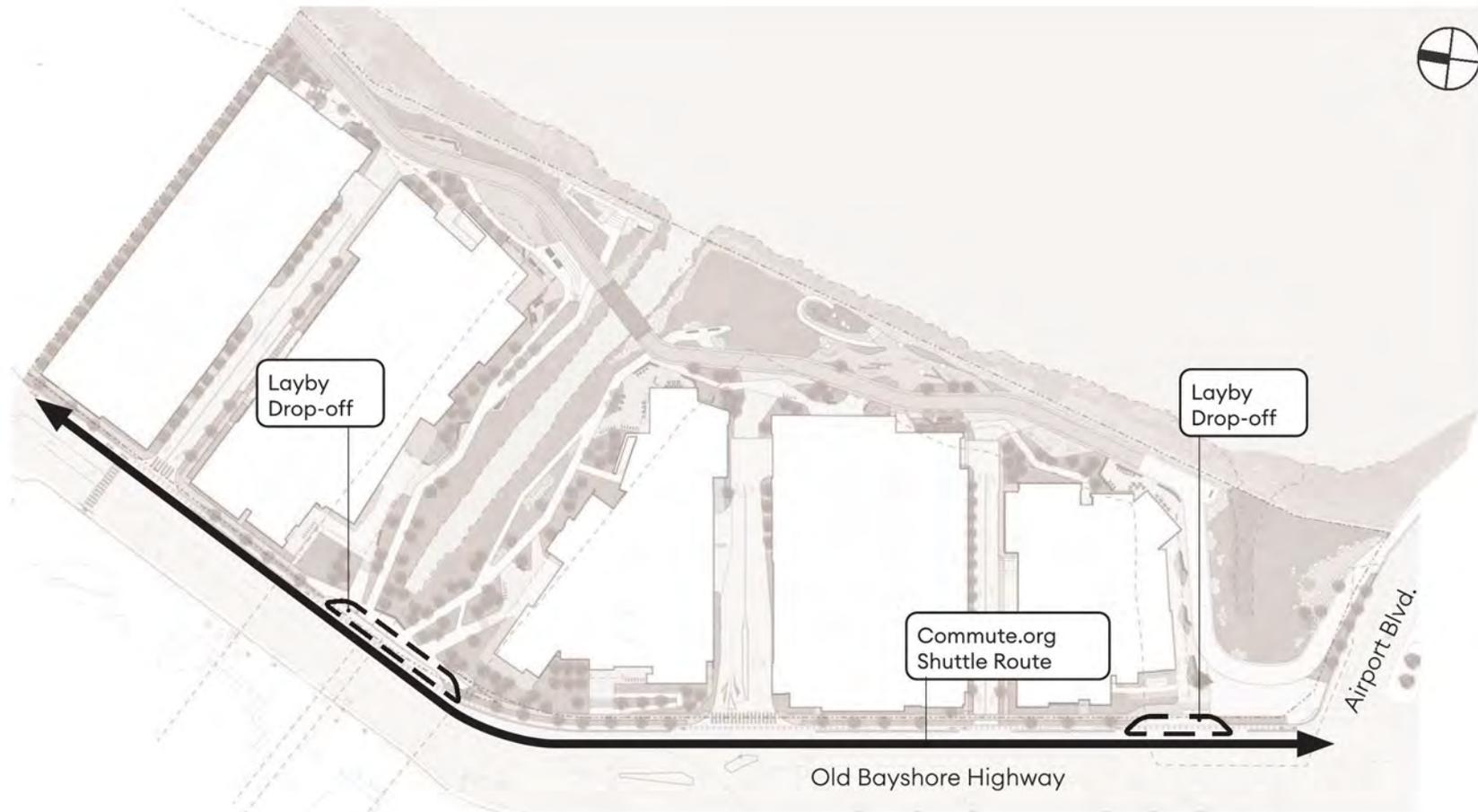


Final Bay Trail

EXHIBIT F

Map of Community Benefits

Exhibit F.1



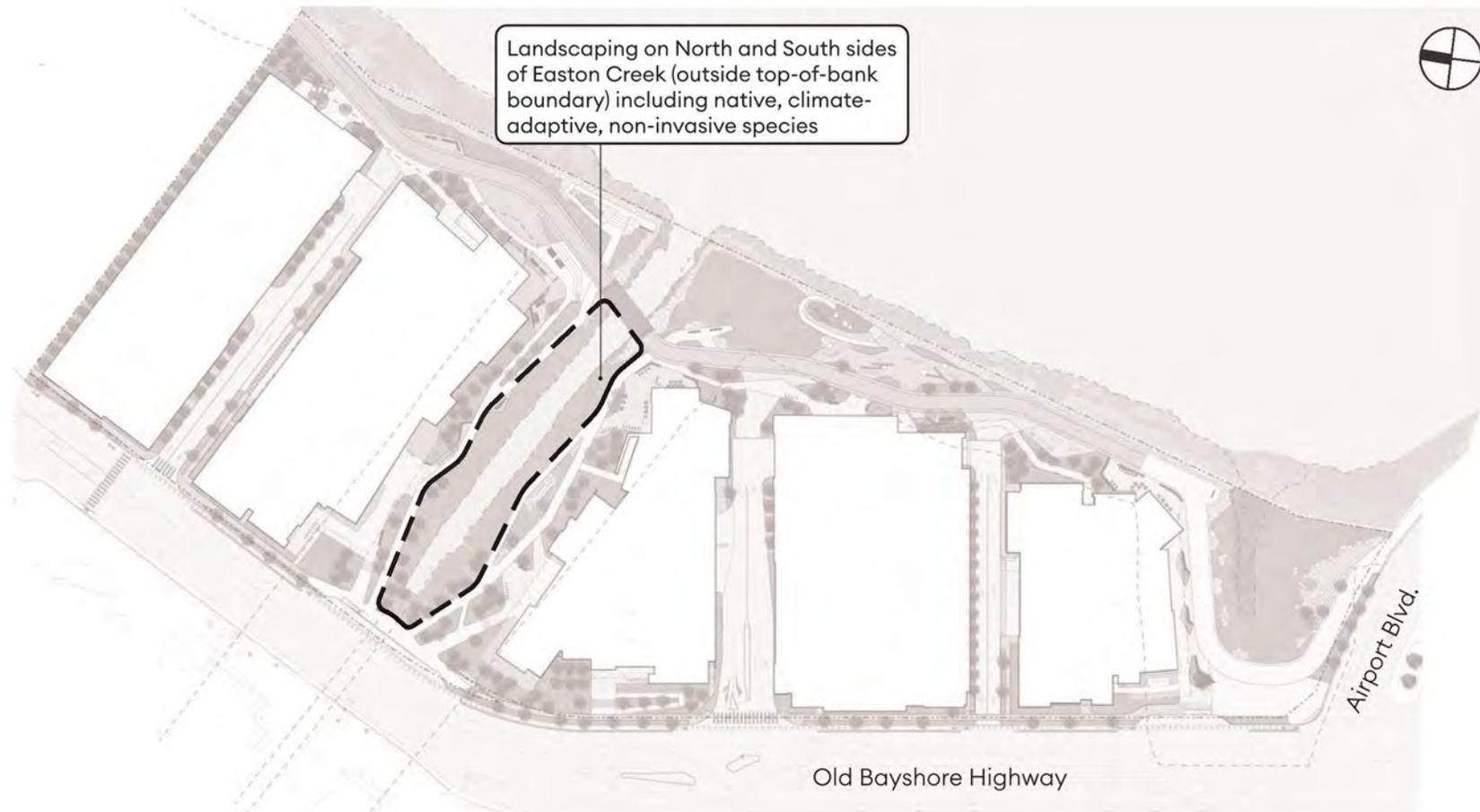
Site plan showing location of 2 layby drop-offs and Commute.org shuttle service route

Exhibit F.2



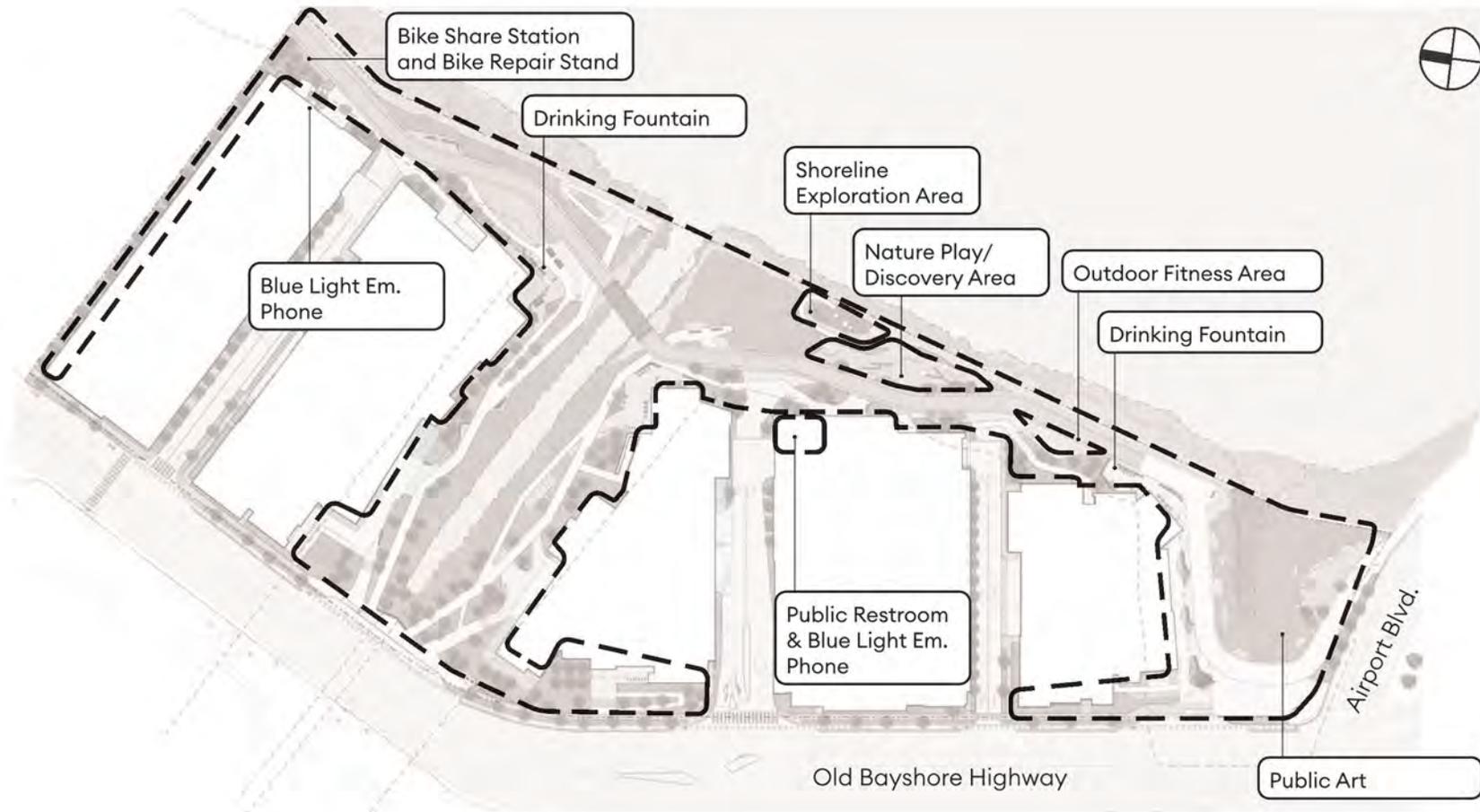
Public Plaza

Exhibit F.3



Easton Creek Landscaping

Exhibit F.4



Publicly Accessible Open Space

Public Seating Located throughout the areas outlined above. Exact locations to be determined at the time final development plans are submitted.

Exhibit F.5



Southern Amphitheater

EXHIBIT G

Impact Fees

EXHIBIT G
ESTIMATED IMPACT FEES

<u>PUBLIC FACILITIES IMPACT FEE</u>		
Public Facilities Impact Fee	1,415,000 SF office 5,000 SF retail	\$4,802,455.00
Credit for existing uses	100,049 SF hotel / restaurant /retail 130,835 SF office	\$1,400,588.00
Total Public Facilities Impact Fees:		\$3,401,867.00

<u>COMMERCIAL LINKAGE FEE</u>		
Commercial Linkage Fee	1,415,000 SF office (\$28,300,000.00) 5,000 SF retail (\$25,000.00)	\$28,325,000.00
Credit for existing uses	Retail (\$128,380.00) Hotel (\$743,730.00) Office – 50,000 SF or more (\$2,616,700.00)	\$3,488,810.00
Total Commercial Linkage Fees:		\$24,836,190.00

*Estimates in this Exhibit G are based on approved design and will be finalized at issuance of permits.

EXHIBIT H

Annual Review Form

EXHIBIT H

ANNUAL REVIEW FORM

This Annual Review Form is submitted to the City of Burlingame (“**City**”) by _____ (“**Developer**”) pursuant to the requirements of California Government Code section 65865.1 regarding Developer’s good faith compliance with its obligations under the Development Agreement between the City and Developer dated as of _____, 2022 (“**Development Agreement**”). All terms not otherwise defined herein shall have the meanings assigned to them in the Development Agreement:

Annual Review Period: _____ to _____.

[This Annual Review Form may specify whether applicable Impact Fees, Processing Fees, Connection Fees and/or other fees due and payable have been paid during this annual review period; describe any extension of the Term of the Development Agreement as a result of Force Majeure Delay pursuant to Section 3.2D of the Development Agreement; summarize specific strategies to be followed in the coming year intended to facilitate the processing of permits and/or Project construction; describe whether other applicable Development Agreement obligations were completed during this annual review period; and/or specify whether Developers have assigned the Development Agreement in whole or in part or otherwise conveyed the Property or any portion thereof during this annual review period.]

The undersigned representative confirms that Developer is:

_____ In good faith compliance with its obligations under the Development Agreement for this annual review period.

_____ Not in good faith compliance with its obligations under the Development Agreement for this annual review period, in response to which Developer is taking the actions set forth in the attachment hereto.

IN WITNESS WHEREOF, Developers have executed this Annual Review Form as of this _____ day of _____, 20__.

DEVELOPER:

_____, a

By: _____

Name: _____

Title: _____

EXHIBIT I

Form of Assignment and
Assumption

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

CITY OF BURLINGAME
City Hall
501 Primrose Road
Burlingame, CA 94010

Attn: Michael Guina, City Attorney

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EXEMPT FROM FILING FEES PER GOVERNMENT CODE §27383

DEVELOPMENT AGREEMENT ASSIGNMENT

This Development Agreement Assignment ("**Agreement**") is effective upon recording and dated for reference purposes as of _____, 20__ by and between [INSERT ENTITY OR ENTITIES _____ (the "**Assignor**"), and _____, a _____ ("**Assignee**"). This Agreement is made and entered into at the consent of the City of Burlingame, a California municipal corporation (the "**City**").

RECITALS

- A. In accordance with Government Code section 65864, et seq., the City, acting through the Burlingame City Council, approved a Development Agreement by and between Assignors and the City for the redevelopment of approximately 12 acres of real property located at 1200-1340 Old Bayshore Highway in Burlingame, California known as the Peninsula Crossing ("**Project**"), dated as of _____, 2024, by Ordinance No. _____, adopted by the Burlingame City Council on _____, 2024 (the "**Development Agreement**").
- B. Assignor is the fee owner of that certain real property subject to the Development Agreement described and identified on **Exhibit A** attached hereto (the "**Property**").
- C. The Development Agreement was recorded in the Office of the Recorder for the County of San Mateo on _____, 2024.
- D. The Development Agreement provides that, subject to the terms and conditions contained in Article 10 therein, Developer (here, Assignor) may transfer and assign its rights, duties, and obligations under the Development Agreement to a Transferee (here, Assignee) subject to the written consent of the City. [OMIT THIS RECITAL IF TRANSFER IS A "DEVELOPER PERMITTED TRANSFER"]
- E. Assignor and Assignee have entered into that certain Purchase and Sale Agreement dated as of _____, 20__ (the "**Purchase Agreement**"), pursuant to which Assignor has agreed to sell or transfer to Assignee, and Assignee has agreed to acquire from Assignor, the Property upon the terms and conditions set forth.

- F. In connection with the purchase and sale of the Property, and pursuant to Article 10 of the Development Agreement, Assignor desires to assign all of its interests, rights, duties, and obligations in and under the Development Agreement applicable to the Property to Assignee and, in consideration thereof, Assignee is willing to assume all of Assignor's interests, rights, duties, and obligations in and under the Development Agreement from Assignor, all of which may be relied upon by the City.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the City, Assignor and Assignee agree, effective on the Close of Escrow under the Purchase Agreement (the "**Effective Date**"), as follows:

1. Assignment of Rights and Responsibilities. Assignor, subject to the terms of Section 10.1 of the Development Agreement[, including without limitation the express written consent of the City releasing Assignor from all of its obligations under the Development Agreement,] [OMIT PRIOR PHRASE IF TRANSFER IS A "DEVELOPER PERMITTED TRANSFER"] hereby sells, transfers, assigns, conveys, and delivers to Assignee all of Assignor's interests, rights, duties, and obligations, to, in, and under the Development Agreement, which are more particularly defined as follows: _____ (collectively, "**Rights and Obligations**").
2. Assumption of Rights and Responsibilities. Assignee[, subject to the express written consent of the City,] [OMIT PRIOR PHRASE IF TRANSFER IS A "DEVELOPER PERMITTED TRANSFER"] hereby assumes all such Rights and Obligations. Assignee will be solely liable to City for any and all obligations as the Developer under the Development Agreement arising on and after the Effective Date. Assignee acknowledges that it reviewed the Development Agreement and agrees to be bound by the Development Agreement, and that Assignee has received and approved an Estoppel Certificate from the City in accordance with Section 13.11 of the Development Agreement.
3. Confirmatory Acts, Instruments. Each party hereby covenants to the other party(ies) that it will, at any time and from time to time, upon written request therefor, execute and deliver to such other party(ies), its nominees, successors and/or assigns, any new or confirmatory instruments and do and perform any other acts which such party(ies), its nominees, successors and/or assigns may reasonably request in order to fully transfer to such other party(ies) all rights and obligations of Assignor intended to be transferred and assigned hereby.
4. Representations and Warranties. Assignor represents and warrants to Assignee, to Assignor's actual knowledge, as of the Effective Date, that the Development Agreement is in full force and effect and that neither Assignor nor the City is in default under the Development Agreement nor has either Assignor or the City failed to perform any material terms or conditions of the Development Agreement for which notice has or may been given under Section 11.1 of the Development Agreement. Assignor makes no representation or warranties, express or implied, concerning the Development Agreement, except as expressly provided herein.

5. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective heirs, successors, executors, administrators, and assigns.
6. Amendments. No amendment, modification, change or waiver of any term or provision contemplated under this Agreement shall be valid unless in writing and duly executed by the parties hereto or their respective successors-in-interest and the City. Any waiver shall be limited to the circumstances or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term or provision hereof or of the same circumstance or event upon any recurrence thereof.
7. Severability. Any provision of this Agreement which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full force and effect.
8. Indemnity. Assignee hereby consents to and expressly reaffirms any and all indemnities in favor of the City set forth in the Development Agreement, including, without limitation, those outlined in Section 9.5.B.4 and Article 12.
9. Choice of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Any dispute under or in connection with this Agreement shall be subject to, and the parties hereby submit to, the exclusive jurisdiction of, and personal jurisdiction within, the state and federal courts located within San Mateo County, California.
10. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including the actual fees of its reasonable attorneys incurred for prosecution, defense, consultation, or advice in such action or proceeding.
11. Notice. The Notice Address shall be the ones as described in the Development Agreement. In the case of a notice of communication to the Assignee:

If to Assignee, to: _____

If to Assignor, to: _____

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken

together, will be deemed to constitute one and the same agreement. It shall not be necessary in making proof of this Agreement to account for more than one counterpart.

IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be executed as of the date written above.

ASSIGNOR:

[INSERT ASSIGNOR], a Delaware limited liability company

By: _____

[signature must be notarized]

[signatures continue on next page]

ASSIGNEE:

By: _____

[signature must be notarized]

[OMIT CITY APPROVAL IF TRANSFER IS A “DEVELOPER PERMITTED TRANSFER”]

CITY APPROVAL

City of Burlingame, by its signature below, hereby (i) approves, in accordance with Section 10.1 of the Development Agreement, the form of this Agreement, and (ii) effective upon the execution of this Agreement by Assignor and Assignee and the recordation of this Agreement in the Official Records of San Mateo County, releases Assignor from all of its obligations under the Development Agreement.

CITY:
CITY OF BURLINGAME, a municipal corporation

By: _____
_____, City Manager

[signature must be notarized]

APPROVED AS TO FORM:

By: _____
_____, City Attorney

ATTEST:

By: _____
_____, City Clerk

