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MASTER DEVELOPMENT AGREEMENT

By and Among

THE CITY OF FOSTER CITY,

AMB INSTITUTIONAL ALLIANCE FUND III, L.P.,

FOSTER CITY EXECUTIVE PARK PARTNERS,

And

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY

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MASTER DEVELOPMENT AGREEMENT
PILGRIM-TRITON PROJECT

This Master Development Agreement ("Development Agreement" and sometimes "Agreement"), dated as of February 11, 2010 ("Effective Date"), is entered into by and among the City of Foster City, a California municipal corporation ("City"), and AMB Institutional Alliance Fund III, L.P., a Delaware limited partnership ("AMB"), Foster City Executive Park Partners, a California general partnership ("FCEPP"), and The Northwestern Mutual Life Insurance Company, a Wisconsin corporation ("Northwestern") (AMB, FCEPP and Northwestern are individually referred to as a "Developer" and are collectively referred to as "Developers"), pursuant to section 65864 *et seq.* of the California Government Code. (Developers and City are, from time to time, referred to individually in this Agreement as a "Party" and collectively as the "Parties").

This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties.

RECITALS

A. **Purpose**. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code sections 65864 *et seq.* (the "Development Agreement Statute") which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property. In accordance with the Development Agreement Statute, the City has enacted Resolution No. 80-73 to implement procedures for the processing and approval of development agreements ("Resolution 80-73"). (The provisions of the Development Agreement Statute and the City's development agreement policies set forth in Resolution No. 80-73 are collectively referred to herein as the "Development Agreement Law.") This Agreement has been drafted and processed pursuant to the Development Agreement Law.

B. **Developers' Interest in Property**. Developers own adjacent real property in City of Foster City, County of San Mateo, State of California. AMB is the fee owner of approximately 6.1 acres, which is legally described in Exhibit A-1 and shown on the map attached hereto as Exhibit A-2. FCEPP is the fee owner of approximately 4.92 acres, which is legally described in Exhibit B-1 and shown on the map attached hereto as Exhibit B-2. Northwestern is the fee owner of approximately 9.71 acres, which is legally described in Exhibit C-1 and shown on the map attached hereto as Exhibit C-2. Collectively, the properties described in Exhibits A-1, B-1 and C-1 and as shown on Exhibits A-2, B-2 and C-2 make up the property that is subject to this Agreement ("Property").

C. **Project**. Consistent with the City's land use planning objectives, the Developers' proposed project includes a mixed-use master plan, including up to 296,000 square feet of commercial/industrial office use and up to 730 residential units, including up to 64 live/work units ("Project"), as depicted on the Master Plan.

D. **Environmental Review**. The Project was the subject of an environmental impact report under the California Environmental Quality Act ("CEQA") (set forth in Public Resources Code, section 21000 *et seq.*) which was certified by the City Council on April 21, 2008, as recommended for certification by the Foster City Planning Commission by action taken at its regular meeting of April 3, 2008. The City Council certified the Final Environmental Impact Report for Pilgrim-Triton ("EIR") by Resolution No. 2008-39 adopted April 21, 2008.

E. **Existing Approvals**. Following certification of the EIR, the City took the following actions:

(1) Mitigation Monitoring and Reporting Program adopted by the City with the EIR through City Council Resolution No. 2008-39 adopted April 21, 2008 ("MMRP").

(2) General Plan map and text amendments to change the land use plan designation from Service Commercial to Service Commercial with Housing and to adopt the Pilgrim Drive/Triton Drive Commercial-Industrial-Housing Area policies on April 21, 2008 by City Council Resolution No. 2008-38 (the "General Plan Amendment").

(3) A rezoning from CM/PD (Commercial Mix/Planned Development) District to a CM/PD (Commercial Mix/Planned Development) District (PZ-06-002) with a General Development Plan approved by Ordinance No. 546 introduced by the City Council on April 21, 2008 and adopted by the City Council on May 5, 2008 (the "Zoning Amendment").

F. **Developers' Assurance**. The complexity, magnitude and long-term build out of the Project would not be feasible if the City had not determined, through this Agreement, to provide a sufficient degree of certainty in the land use regulatory process to justify Developers' substantial financial investment associated with development of the Project. As a result of the execution of this Agreement, all Parties can be assured that the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing and proceeding with construction of the Project and promote the achievement of the private and public objectives of the Project.

G. **City Benefits**. City is desirous of advancing the socio-economic interests of the City and its residents by encouraging quality development, economic growth and housing in the redevelopment of the Property, thereby enhancing housing and employment opportunities for residents and expanding the City's tax base. Specifically, City is desirous of promoting the retention and expansion of businesses already operating within the City by allowing a greater diversity, density and intensity of land uses/businesses within the Project area; increasing opportunities for small, resident serving business to remain in or locate in the City by allowing mixed-use developments; providing additional housing for the residents of the City, including Affordable Housing; and upgrading on- and off-site roadway infrastructure. City is also desirous of gaining the public benefits of the Project under the Existing Approvals and this Agreement, which are in addition to those dedications, conditions and exactions required by laws or regulations, and which advance the planning objectives of, and provide benefits to, the City.

H. **Project Provides Substantial Benefits.** 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 Existing Approvals and Subsequent 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 and tax benefits, housing, and other public benefits to City, and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Law was enacted.

I. **Consistent with General Plan**. City has given the required notice of its intention to adopt this Development Agreement and has conducted public hearings thereon pursuant to Government Code section 65867 and Resolution 80-73. As required by Government Code section 65867.5, City has found that the provisions of this Development Agreement and its purposes are consistent with the goals, policies, standards and land use designations specified in the General Plan (as amended by the Existing Approvals).

J. **Enacting Ordinance.** On August 20, 2009, the City of Foster City Planning Commission (the "Planning Commission"), the initial hearing body for purposes of Development Agreement review, recommended approval of this Development Agreement pursuant to Resolution No. P-20-09. On September 21, 2009, the City Council introduced its Ordinance No. 549 approving this Development Agreement and authorizing its execution, and adopted that Ordinance No. 549 on October 5, 2009. That Ordinance ("Enacting Ordinance") became effective on November 4, 2009. The Enacting Ordinance is incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other valuable consideration, the Parties hereby agree as follows:

ARTICLE 1: ADMINISTRATION

1.1. Definitions.

1.1.1. "**Affordable Housing**" shall mean housing available at affordable housing cost, as defined by Health & Safety Code section 50052.5 for ownership housing, and at an affordable rent, as defined in section 50053 for rental housing, to persons and families of low or moderate incomes, as defined in Health & Safety Code section 50093, lower income households, as defined by Health & Safety section 50079.5, and very low income households, as defined in Health & Safety section 50105.

1.1.2. "**Affordable Housing Covenant**" shall have the meaning given in Section 3.4.2.

1.1.3. "**Affordable Units**" shall mean the Affordable Housing units to be developed pursuant to Section 3.4 of this Agreement.

1.1.4. "**Agreement**" shall mean this Development Agreement.

1.1.5. "**AOL Insurance** shall have the meaning given in Section 3.8.

1.1.6. "**AOL Operating Expenses**" shall have the meaning given in Section 3.8.

1.1.7. "**Alternate Office Lease**" shall have the meaning given in Section 3.8.

1.1.8. "**AMB**" shall mean AMB Institutional Alliance Fund III, L.P., a Delaware limited partnership.

1.1.9. "**Applicable City Regulations**" shall have the meaning set forth on Exhibit D.

1.1.10. "**Applicable Law**" shall mean the Applicable City Regulations and all other rules, regulations, official policies, standards and specifications applicable to the development of the Property, as set forth in the Project Approvals, this Agreement, and, with respect to matters not addressed by these documents, those laws, rules, regulations, official policies, standards and specifications governing permitted uses, building locations, timing of construction, densities, design and heights in force and effect on the Effective Date.

1.1.11. "**Assignment**" shall have the meaning given in Section 6.2.

1.1.12. "**Average Household Size**" shall mean the number of residents assumed to occupy each dwelling unit within the Project, which shall be one and ninety-five hundredths (1.95).

1.1.13. "**Bus Turnout**" shall have the meaning given in Section 3.5.1.

1.1.14. "**CEQA**" shall mean the California Environmental Quality Act, California Public Resources Code section 21000, *et seq.*, and the State CEQA Guidelines, (California Code of Regulations, Title 14, section 15000, *et seq.*), as each is amended from time to time.

1.1.15. "**City**" shall mean the City of Foster City.

1.1.16. "**City Parties**" shall have the meaning given in Section 2.13.

1.1.17. "**Claims**" shall have the meaning given in Section 5.3.3.

1.1.18. "**Cooperation Agreement**" shall have the meaning given in Section 3.6.1.

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

1.1.20. "**Consultant**" shall have the meaning given in Section 2.2.5.

1.1.21. "**Consultant Contract**" shall have the meaning given in Section 2.2.5.

1.1.22. "**Consultant Fees**" shall have the meaning given in Section 2.2.5.

1.1.23. "**CPI**" shall mean the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose Consolidated Metropolitan Statistical Area, or its successor index.

1.1.24. "**Default Hearing**" shall have the meaning given in Section 5.1.3.

1.1.25. "**Defaulting Developer**" shall mean a Developer that commits a default of any term, condition, or obligation of this Agreement.

1.1.26. "**Developer**" shall mean AMB, FCEPP, or Northwestern, as applicable.

1.1.27. "**Development Agreement**" shall mean this Agreement and all Exhibits attached hereto.

1.1.28. "**Development Agreement Law**" shall have the meaning given in Recital A.

1.1.29. "**Development Agreement Statute**" shall have the meaning given in Recital A.

1.1.30. "**Development Project**" shall mean a development project as defined by section 65928 of the California Government Code.

1.1.31. "**Effective Date**" shall mean the date determined under Section 1.2.

1.1.32. "**Electrical Back-Up**" shall have the meaning given in Section 3.5.3.

1.1.33. "**EIR**" shall have the meaning given in Recital D.

1.1.34. "**EMID**" shall mean Estero Municipal Improvement District.

1.1.35. "**Enacting Ordinance**" shall mean the Ordinance approving this Agreement as referenced in Recital J.

1.1.36. "**Exactions**" shall mean exactions that may be imposed by the City as a condition of developing the Project, including but not limited to in-lieu payments, requirements for acquisition, dedication or reservation of land, obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project as shown on the Phasing Plan, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, measures imposed for the protection of the public health or safety, or impositions made under Applicable City Regulations.

1.1.37. "**Excluded Transfers**" shall have the meaning given in Section 6.8.

1.1.38. "**Excused Delay**" shall mean delay or defaults due to war; insurrection; terrorism; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions

or priority; unusually severe weather which prevents, limits, retards or hinders the ability to perform; environmental conditions, if such condition is unknown after the exercise of reasonable environmental due diligence and delays are due to necessary regulatory agency approvals; initiatives, referenda, litigation or administrative proceedings challenging the Existing Approvals or Subsequent Project Approvals, the Project or the Development Agreement; acts of another party; acts or failures to act of any other public or governmental agency or entity (except that acts or the failure to act of the City shall not excuse performance by the City); or a Material Condemnation as described in Section 3.15 [Condemnation].

1.1.39. "**Existing Approvals**" shall mean the permits and approvals granted to the Developers by the City for the Project as of the date hereof.

1.1.40. "**Existing Buildings**" shall mean buildings on the Property in existence as of the Effective Date of the Agreement.

1.1.41. "**Existing Permitted Use**" shall have the meaning given in Section 2.1.1.(f).

1.1.42. "**Fair Share Contribution for Off-Site Traffic Improvements**" shall have the meaning given in Section 3.6.

1.1.43. "**FCEPP**" shall mean Foster City Executive Park Partners, a California general partnership.

1.1.44. "**Fehr & Peers Study**" shall have the meaning given in Section 3.6.

1.1.45. "**Future Contributing Development**" shall have the meaning given in Section 3.6.2.

1.1.46. "**General Plan**" shall mean the City of Foster City's General Plan.

1.1.47. "**General Plan Amendment**" shall have the meaning given in Recital E.

1.1.48. "**Hazardous Materials**" shall have the meaning given in Section 2.1.1.(a)(ii).

1.1.49. "**Impact Fees**" shall mean the monetary consideration charged by City in connection with a Development Project for the purpose of defraying all or a portion of the cost of mitigating the impacts of the Development Project and development of the public facilities related to development of the Development Project, including, without limitation, any "Fee" as that term is defined by Government Code section 66000(b), special taxes or assessments, but not including "Connection Fees."

1.1.50. "**Live/Work Unit**" shall mean residential developments that have both residential and commercial uses in the same building with the following characteristics: (i) internal access/connections between the live and work areas of the unit; and (ii) both the live and work areas of the unit are under one ownership.

1.1.51. "**Local Agency**" shall mean a governmental agency whose legislative and administrative actions the City has the ability to control, including, but not limited to the Estero Municipal Improvement District. Any entity not within the exclusive control of the City, including a joint powers authority, shall not be deemed a Local Agency for the purposes of this Agreement.

1.1.52. "**Marketing Plan**" shall have the meaning given in Section 3.4.3.

1.1.53. "**Master Plan**" shall mean the general development plan approved as part of the Zoning Amendment and on file with the Community Development Department of the City of Foster City, File Reference # RZ-06-002.

1.1.54. "**Master Property Owners' Association**" shall mean a nonprofit mutual benefit corporation created to own, maintain and operate the Park Plaza Site, other private parks in the Project (if any) and on-site private roads.

1.1.55. "**Material Condemnation**" shall have the meaning given in Section 3.15.

1.1.56. "**Measure A**" shall mean the transportation sales tax codified in San Mateo County Ordinance Number 03135 adopted to improve the highway, road and transportation infrastructure in San Mateo County.

1.1.57. "**Major Amendment**" shall have the meaning given in Section 4.1.2.

1.1.58. "**Minor Amendment**" shall have the meaning given in Section 4.1.1.

1.1.59. "**MMRP**" shall have the meaning provided in Recital E.1.

1.1.60. "**Mortgage**" shall have the meaning given in Section 7.2.1.

1.1.61. "**Mortgagee**" shall have the meaning given in Section 7.2.1.

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

1.1.63. "**New Other Laws**" shall mean New City Laws that are specifically required to be applied by local (other than City), regional, or State or Federal laws or regulations enacted after the Effective Date.

1.1.64. "**Northwestern**" shall mean The Northwestern Mutual Life Insurance Company, a Wisconsin corporation.

1.1.65. "**Northwestern's Property**" is that certain real property which is legally described in Exhibit C-1 and shown on the map attached hereto as Exhibit C-2.

1.1.66. "**Notice of Breach**" shall mean the notice provided to a defaulting party specifying the nature of the alleged default and the manner in which such default may be satisfactorily cured.

1.1.67. "**Notice of Excused Delay**" shall mean the notice provided by a Developer to the City notifying the City of its intent to claim an Excused Delay, the specific grounds for same, and the anticipated period of the Excused Delay.

1.1.68. "**Off-Site Traffic Improvements**" shall mean those traffic improvements identified in Exhibit H.

1.1.69. "**On-Site Circulation Improvements**" shall have the meaning given in Section 3.5.

1.1.70. "**Plaza Easement**" shall mean an easement for public plaza purposes provided over the portions of the Developers' land within the Park Plaza Site.

1.1.71. "**Park Plaza Site**" shall mean the approximately 1.3-acre privately owned real property depicted in Sheets LL1-8 of the Phasing Plan to be used and maintained for public plaza uses subject to the terms of the Plaza Easement.

1.1.72. "**Parties**" shall mean City and Developers.

1.1.73. "**Permitted Uses**" shall mean those permissible uses described in Section 2.1.1.[Permitted Uses].

1.1.74. "**Phase**" shall mean a stage of construction defined in the Phasing Plan.

1.1.75. "**Phase 1 Developer**" shall have the meaning given in Section 3.6.

1.1.76. "**Phasing Plan**" shall mean the plan, dated August 11, 2009, prepared by Wilsey Ham, and consisting of thirty-six (36) sheets, that depicts Phases of Project construction and is on file with the Community Development Department of the City of Foster City, File Reference #UP 08-010.

1.1.77. "**Planning Commission**" shall have the meaning given in Recital J.

1.1.78. "**Processing Fees**" shall have the meaning given in Section 2.2.3.

1.1.79. "**Project**" shall have the meaning given in Recital C.

1.1.80. "**Project Approvals**" means the Existing Approvals and all Subsequent Project Approvals.

1.1.81. "**Property**" shall have the meaning given in Recital B.

1.1.82. "**Required Park Obligation**" shall mean compliance with Chapter 16.36 of the Foster City Municipal Code, except as expressly modified by Sections 3.2 and 3.3 of this Agreement.

1.1.83. "**Resolution No. 80-73**" shall have the meaning given in Recital A.

1.1.84. "**ROW Acquisition Amount**" shall have the meaning given in Section 3.6.4.

1.1.85. "**School Fees**" shall mean school fees imposed on a Developer pursuant to state law, including, without limitation, fees to be paid to the San Mateo Foster City School District and the San Mateo Union High School District.

1.1.86. "**Shuttle Stop**" shall have the meaning given in Section 3.5.2.

1.1.87. "**Specific Development Plan/Use Permit**" shall mean a Use Permit issued pursuant to the Applicable City Regulations, consistent with the Project Approvals and the Sustainable Design Guidelines.

1.1.88. "**Subsequent Project Approvals**" shall mean additional future land use and construction approvals and permits from City in connection with development of the Project which shall be deemed to be part of the Project Approvals as they are approved.

1.1.89. "**Subdivision Map Act**" means California Government Code sections 66410 through 66499.58, as it may be amended from time to time.

1.1.90. "**Sustainable Design Standards**" means the design guidelines attached as Exhibit F to this Agreement.

1.1.91. "**Tentative Map**" means a map created for the proposes of subdividing land pursuant to the Subdivision Map Act.

1.1.92. "**Term**" shall have the meaning set forth in Section 1.3.1, as may be extended pursuant to the provisions of this Agreement.

1.1.93. "**Traffic Construction Payments**" shall have the meaning given in Section 3.6.

1.1.94. "**Traffic Design Payments**" shall have the meaning given in Section 3.6.

1.1.95. "**Transit Operator**" shall have the meaning given in Section 3.8.

1.1.96. "**Triton Drive Cost Invoice**" shall have the meaning given in Section 3.6.

1.1.97. "**Triton Drive Widening Project**" shall have the meaning given in Exhibit H.

1.1.98. "**Triton Drive ROW**" shall have the meaning given in Section 3.6.4.

1.1.99. "**Valero Property**" shall mean the real property located at the southeast quadrant of the Foster City Boulevard/Triton Drive intersection referenced as Assessors Parcel Number 094-010-390.

1.1.100. **"Volunteer Coordinator"** shall have the meaning given in Section 3.8.

1.1.101. **"Warm Shell Condition"** shall mean commercial floor space with (i) mechanical, electrical and plumbing systems installed, (ii) a functional building life safety system, and (iii) code compliant restrooms.

1.1.102. **"Zoning Amendment"** is defined in Recital E.

1.2. Effective Date. The Effective Date of this Agreement shall be the date that the Enacting Ordinance is adopted and this Agreement is fully executed by the Parties. The Effective Date is inserted at the beginning of this Agreement. The Parties acknowledge that section 65868.5 of the Development Agreement Statute and Resolution 80-73 require that this Agreement be recorded with the County Recorder no later than ten (10) days after full execution and delivery of this Agreement, and that the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. Further, within five days of the Effective Date, the City shall file with the county clerk of the County of San Mateo a Notice of Determination pursuant to CEQA regarding the effect of this Agreement.

1.3. Term.

1.3.1. Term of Agreement. The "Term" of this Agreement shall commence on the Effective Date and shall continue for a period of ten (10) years from and after the Effective Date, unless this Agreement is otherwise terminated or extended in accordance with the provisions of this Agreement. The Term has been established by the Parties as a reasonable estimate of the time required to carry out the Project, develop the Project and obtain the public benefits of the Project.

1.3.2. Extension of Term.

1.3.2.1. Excused Delay. If a Developer is deprived of a benefit under this Agreement as a result of an Excused Delay, then the Term of this Agreement shall be extended for the period of such Excused Delay; provided, however, that such extension shall commence to run from the time of the commencement of the cause of the Excused Delay. The Developer claiming the Excused Delay shall notify the City of its intent to claim an Excused Delay within thirty (30) days of the commencement of the cause, the specific grounds for same, and the anticipated period of the Excused Delay ("Notice of Excused Delay"). After the City's receipt of such notice from a Developer, the City may reasonably object in writing to Developer's Notice of Excused Delay by delivering written notice to the Developer setting forth the reasons for the City's objections. If the City does not object in writing to a Developer's Notice of Excused Delay within thirty (30) days after receipt of such notice, then the Term of this Agreement shall be modified in accordance with the Notice of Excused Delay, provided the Notice of Excused Delay included an express statement that City's failure to object in writing to Developer's Notice of Excused Delay would be deemed City's approval of the same. If the City timely objects in writing to Developer's Notice of Excused Delay, the City and the Developer seeking an extension of the Term on the grounds of an Excused Delay shall meet and confer

within thirty (30) days of the date of Developer's receipt of the City's written objection with the objective of attempting to arrive at a mutually acceptable solution as to whether the event constitutes an Excused Delay and whether the Term should be extended. Developers acknowledge that adverse changes in economic conditions, either of one or more Developers specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing or other lack of funding to complete the Project shall not constitute grounds for Excused Delay; provided, however, such factors will be taken into consideration as part of the City Council's determination of whether an extension may be granted as set forth in Section 1.3.2.2 [Diligent Compliance]. Developers expressly assume the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date. The time for City's performance of its obligations hereunder shall also be extended by the period of any Excused Delay.

1.3.2.2. Diligent Compliance. The Term shall also be extended by the City Council with respect to all or a portion of the Property for five (5) years if the Developer seeking an extension is not in material default of any of its obligations herein and the City Council determines in its reasonable discretion that prior to the expiration of the initial Term the applicable Developer has made diligent efforts to (i) develop, market and sell the Developer's portion of the Property as evidenced by the annual reports submitted pursuant to Section 5.2 [Annual Review], (ii) apply for required Subsequent Project Approvals for the Project improvements to be constructed on Developer's portion of the Property, and (iii) construct the Project improvements on the Developer's portion of the Property, but despite such diligent efforts, the requesting Developer has not been reasonably able to commence or complete construction to allow such Developer to reach allocated commercial/retail densities and/or residential unit maximums. Such determination shall be based on the factors described in Section 5.2.2(c) of this Agreement as well as the information provided in the Annual Review Form and the public hearing described in Section 5.2.2(b). AMB, FCEPP and Northwestern shall each have independent rights to seek an extension of the initial Term of this Agreement over that portion of the Property which it owns.

1.3.2.3. Memorandum of Extension. Within ten (10) days after the written request of any Party hereto, the City and the applicable Developer(s) agree to execute, acknowledge and record in the Official Records of San Mateo County a memorandum evidencing any approved extension of the Term pursuant to this Section 1.3.2 [Extension of Term].

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

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

1.4.2. No approvals or consents of any persons are necessary for the execution, delivery or performance of this Agreement by Developer, except as have been obtained.

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

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

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

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

ARTICLE 2: DEVELOPMENT OF THE PROPERTY

2.1. Uses and Development Standards. Subject to the fulfillment of the provisions of this Agreement and the obligations required by the Project Approvals, the City hereby grants to each Developer the present vested right to develop and construct on the Property all the improvements authorized by the Project Approvals and this Agreement. To the extent permitted by law, and except as otherwise provided herein, no future modification of the City's General Plan, Municipal Code, ordinances, policies or regulations shall apply to the Property that purports to (i) limit the Permitted Uses of the Property, the density and intensity of use (including but not limited to maximum number of dwelling units and floor area ratios of commercial/retail buildings), the maximum height and size of proposed buildings, (ii) impose Impact Fees, Exactions, requirements for reservation or dedication of land for public purposes, the subdivision of land, or requirements for infrastructure, public improvements, or public utilities, other than as provided in the Project Approvals, the Master Plan or pursuant to this Agreement, (iii) impose conditions upon development of the Property other than as permitted by the Applicable City Regulations, New Other Laws, the Project Approvals and this Agreement, or (iv) limit the rate of development of the Property; provided, however, that nothing in this Agreement shall prevent or preclude City from adopting any land use ordinances, policies, regulations or amendments permitted herein.

2.1.1. Permitted Uses. The permitted uses shall include up to two hundred and ninety six thousand (296,000) square feet of commercial, industrial and/or office uses and up to seven hundred and thirty (730) residential units, including up to sixty four (64) Live/Work Units ("Permitted Uses"), all of which shall be in substantial conformance with the Master Plan and in conformance with the Project Approvals and the terms and conditions of this Agreement, as may be amended from time to time by the City and Developers according to the procedures set forth

in Section 4.1.1. [Minor Amendments] or Section 4.1.2. [Major Amendments], and subject to the following requirements:

(a) Commercial, industrial and/or office uses shall be permitted so long as the use is compatible with the Master Plan, Project Approvals and General Performance Standards in Section 17.68 of the Foster City Municipal Code; provided, however, that biotechnology uses will be allowed on the Property only as follows:

(i) No uses shall be allowed that would require venting or other air circulation beyond standard HVAC required for residential or office uses;

(ii) No uses shall be allowed that would pose a threat to the public health, safety or general welfare of neighboring uses by production of offensive odor, dust, noise, bright lights, vibration, or the generation, transport, use, disposal or storage of any "Hazardous Material," as defined herein, on or about the Property, except for limited quantities of standard office and janitorial supplies containing chemicals categorized as Hazardous Material. As used herein, "Hazardous Material" shall mean any hazardous or toxic substance, material, or waste at any concentration that is or becomes regulated by the United States, the State of California, or any other local government authority having jurisdiction over the Property.

(b) Commercial uses and Live/Work Units abutting residential uses shall comply with all requirements of the Master Plan and the Project Approvals as well as the following criteria: (i) no regular heavy truck loading or delivery in outdoor areas between the hours of 8:00 p.m. and 7:30 a.m., except for basic trash service; (ii) storage of hazardous chemicals shall only be allowed in quantities determined by the Fire Marshall and in all instances in the manner required by law; (iii) no outside storage of materials shall be permitted except in direct connection with loading or unloading of goods for a limited period and no assembly or manufacturing of products shall be permitted outdoors; and (iv) land uses must not regularly generate a parking requirement that cannot reasonably be accommodated on-site or in contiguous private and public parking areas.

(c) Live/Work Units shall be permitted in locations designated for Live/Work Units on the Master Plan. A Developer may seek a Subsequent Project Approval to locate a Live/Work Unit in a different location than depicted on the Master Plan under the Applicable City Regulations, provided, however, any such location changes shall be subject to approval by the City in its sole discretion. Owners of Live/Work Units will not be required to obtain a business license, unless a business is operated within the premises that would normally require a business license. Live/Work Units may be used solely for residential purposes. Under no circumstances will commercial food preparation or on-site food service uses be allowed in the Live/Work Units.

(d) During the Term of this Agreement, buildings on the Property in existence as of the Effective Date ("Existing Buildings") shall be exempt from the removal, alteration or conversion requirements of Municipal Code Sections 17.70.080 and 17.70.090. In addition, during the Term of this Agreement, the owner of an Existing Building may perform improvements to the interior of the Existing Building (including tenant improvements), in the

event of a casualty may rebuild the Existing Building consistent with the use at the time of such casualty, and, subject to the owner obtaining all required City approvals, including any design review approvals, perform minor external modifications and refurbishment to the Existing Building, without triggering the application of Municipal Code Sections 17.70.080 and 17.70.090.

(e) In addition to City's agreements under subsection (d) above, City agrees that following termination of this Agreement, it shall not enforce the provisions of Municipal Code Sections 17.70.080 and 17.70.090 to require the removal, alteration or conversion of a nonconforming Existing Building under such sections to the extent such Existing Building's nonconformance with otherwise applicable use requirements is a consequence of adoption of the Project Approvals, including the rezoning effectuated by the Zoning Amendment. This provision shall survive expiration of the Term of this Agreement.

(f) Notwithstanding anything in Section 2.1.1, upon the effective date of the Enacting Ordinance and in accordance with Government Code sections 65850(a) and 65853-65857,any lawfully established use or any use permitted before the adoption of the Zoning Amendment ("Existing Permitted Use"), may continue or be allowed in an Existing Building during the Term of the Agreement, including the continuation or establishment of such use by new tenant or existing tenants. In addition, following termination of the Agreement, where an Existing Permitted Use's nonconformance with otherwise applicable zoning or other land use requirements is a consequence of adoption of the Existing Approvals, including the rezoning effectuated by the Zoning Amendment, such Existing Permitted Use may continue or be established until such time as the City Council changes the zoning or other land use designations or entitlements applicable to such Property.

2.1.2. Density and Intensity of Development. Developers shall have the vested right to develop the Property in conformance with and subject to the maximum density indicated in the Master Plan and as set forth in Exhibit E [Permitted Density and Intensity of Use].

2.1.3. Specific Development Plan/Use Permit Standards. Minimum/maximum lot size, maximum gross lot coverage, maximum floor area, setbacks and other development standards shall be as specified in Specific Development Plans/Use Permits.

2.1.4. Sustainable Design Standards. Each applicant for a Specific Development Plan/Use Permit shall comply with the Sustainable Design Standards set forth in Exhibit F to the extent applicable.

2.1.5. Conflicts. In the event of any express conflict or inconsistency between the terms of this Agreement and any aspect, term or condition of Applicable City Regulations or the Project Approvals, this Agreement shall control.

2.1.6. Parking. Each Specific Development Plan/Use Permit will establish the number and location of parking spaces applicable to the development that is the subject of the Developer's application. Developers shall include street parking where streets are to be owned and maintained privately by the Master Property Owners' Association. Street parking provided on private streets within the Master Plan shall be counted towards parking requirements. In

addition, City shall allow the approximately ten (10) to fifteen (15) street parking spaces located along the public section of Triton Drive that is intended to become privatized during the long term build out of the Property, as depicted on Sheet CP1, 2, 5 and 6 of the Phasing Plan, to be counted towards the Project's parking requirements. Where shared parking is identified by the Developers, the City will consider, in good faith, such proposals. Any shared parking facilities must meet the requirements of Section 17.62.060D.1.a.-d. of the Foster City Municipal Code. Each Specific Development Plan/Use Permit application that relies on shared parking to satisfy the Applicable City Regulations must include (i) data on parking counts; (ii) a proposed form of agreement between project applicant and parking provider, for review and approval by the City Attorney, to be entered into and recorded prior to issuance of a building permit, which agreement shall be binding on the owners and their successors and assigns in perpetuity; (iii) a map showing the shared parking areas; and (iv) a narrative describing the proposed shared parking strategy.

2.1.7. Tentative Maps. When a Developer submits an application for issuance of a Tentative Map, the City may not require such Developer to prepare a Tentative Map for land other than the land that the Developer seeks to subdivide as part of the Tentative Map application.

2.2. Impact Fees, Exactions, Processing Fees and Taxes. Except as otherwise provided herein, Developers agree to pay when due any required fees, taxes, assessments, impact fees, and other monetary and non-monetary exactions, as and to the extent provided below. Developers reserve the right to challenge whether such fees, taxes, assessments, impact fees or other monetary and non-monetary exactions have been accurately and appropriately calculated, measured and/or applied to their portion of the Property in accordance with this Agreement. In the event that a Developer challenges such fee, tax, assessment, impact fee or other exaction, such Developer shall pay under protest. The City agrees not to delay issuance of permits pending resolution of such protest.

2.2.1. Federal/State Compliance Fees. City may charge and Developers agree to pay any new, increased or modified taxes, assessments, impact fees or other monetary or non-monetary exactions, whether imposed as a condition of or in connection with any Subsequent Project Approvals or otherwise, which are uniformly imposed and reasonably necessary to comply with the requirements of any Federal or State statute or regulation which is enacted or adopted after the Effective Date of this Agreement.

2.2.2. Other Local Agency Compliance Fees. City may charge and Developers agree to pay any new, increased or modified taxes, assessments, impact fees or other monetary or non-monetary exactions, whether imposed as a condition of or in connection with any Subsequent Project Approvals or otherwise, which are uniformly imposed and reasonably necessary to comply with the requirements of local governmental agencies other than a Local Agency.

2.2.3. Processing Fees. City may charge and Developers agree to pay all processing fees, including application, permit processing, plan checking (time and materials) and inspection and monitoring fees ("Processing Fees"), for land use approvals, grading and building permits, General Plan maintenance fees, and other permits and entitlements, which are in force

and effect on a City-wide basis at the time those permits, approvals or entitlements are applied for, and which are intended to cover the actual costs of processing the foregoing.

2.2.4. Impact Fees and Exactions. City may charge and Developers agree to pay all those Impact Fees set forth in Exhibit G [Impact Fees] at the rates then in effect at the time land use or development permits, approvals or entitlements are applied for on any or all portions of the Project. In addition, City may impose and Developer shall comply with those Exactions required by this Agreement, including the requirements pertaining to dedication of the Plaza Easements. Except as expressly provided in this Agreement, the Master Plan or the Existing Approvals, the City will not impose and the Developers will not be required to pay any Impact Fees enacted after the Effective Date that are not included in Exhibit G. In addition, except as provided herein, the City will not impose and the Developers will not be required to comply with and/or pay for any Exactions other than as provided in or contemplated by this Agreement, the Master Plan, the Phasing Plan or the Existing Approvals.

2.2.5. Consulting Fees. City may, in its sole discretion, contract with one or more outside planners, inspectors, engineers or consultants ("Consultant" and collectively "Consultants") to perform all or any portion of the planning, monitoring, inspection, testing and evaluation services to be performed in connection with processing applications, construction and development of the Project. City shall consult with applicable Developers in establishing a scope of work and budget(s) for a service contract with each Consultant ("Consultant Contract"); but the choice of Consultant and scope of work shall be determined by the City. City agrees that the scope of work to be undertaken by the Consultants shall be reasonable in light of the size, type and complexity of the Project. Each Consultant Contract specific to this Project shall require Consultant to submit itemized invoices to City for moneys then owed ("Consultant Fees"). City shall provide the applicable Developer with copies of itemized invoices for such services promptly upon receipt of the invoice from the Consultant by City, provided City shall not be required to disclose any information on its attorneys' invoices that may be subject to attorney-client or work-product privilege. The applicable Developer shall pay to City, within thirty (30) days following City's written demand therefor, the full amount of all Consultant Fees; provided, however, the applicable Developer shall have the right to dispute in writing any charges which it believes, in its reasonable business judgment, are incorrect, unreasonable or outside the scope of the approved Consultant Contract, within ten (10) days of City's provision of the itemized invoice. Failure to submit a written dispute within such ten (10) day period shall be deemed Developers' agreement to the accuracy and reasonableness of such charges. If Developers timely dispute a charge, City shall require Consultant to provide a good faith, written explanation. If, after consultation with Developers, City finds the cost or fee is incorrect, unreasonable or outside the terms of the approved service contract, City shall require that Consultant reduce its charges accordingly. If City finds the cost or fee is correct, reasonable and within the scope of the approved Consultant Contract, then Developers shall pay to City the full amount of such Consultant Fees within thirty (30) days following such determination. Any reduction shall be credited against Developers' next invoice or promptly refunded in the event the dispute relates to a final invoice. If the Developer makes a timely objection to a final invoice, payment shall be withheld for up to thirty (30) days to permit City to determine, in light of Developer's objections, whether the charges will be rejected. The Consultant Fees shall be in addition to, and not in lieu of, the Processing Fees; provided, however, City agrees not to double

charge Developers (through the imposition of both a Processing Fee and a Consultant Fee) for any individual monitoring, inspection, testing or evaluation service.

2.3. Density Transfer. Subject to the height, bulk and massing limitations in the Master Plan and Project Approvals and subject to the requirement that the Affordable Housing units be dispersed throughout all residential portions of the Project as provided in Section 3.4.1 below, Developers may transfer residential dwelling units and commercial square footage density to another Developer within the Master Plan so long as (i) the result of such adjustment does not create a new significant environmental impact without appropriate environmental review, and (ii) the transfer is approved by the Planning Commission as part of the Specific Development Plan/Use Permit process and pursuant to Section 4.1.2. [Major Amendment]. Nothing in this Section 2.3 shall be deemed to limit the City's full and complete discretion with respect to design review issues.

2.4. Timing of Commencement of Construction and Completion. 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, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider, and expressly provide for, the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the desire of the Parties hereto to avoid that result. 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, Developers shall have the vested right to develop the Project in such order and at such rate and at such times as Developers deem appropriate in the exercise of their business judgment, so long as each Phase of construction can operate independently, consistent with the Phasing Plan, as determined by City in its reasonable discretion. The Developers from time to time may propose revisions to the Phasing Plan in accordance with Section 4.1.1 [Minor Amendments]. Any such Phasing Plan revisions shall be subject to review and approval by the City in its reasonable discretion based on factors including, without limitation, any potential consequences related to the provision of the park land and improvements and public infrastructure described in Article 3 below. The Developers shall develop each Phase and size public infrastructure so as to accommodate other Phases. Further, Phases described in the Phasing Plan may be developed in any order so long as it can be demonstrated that each Phase can operate independently, that uses proposed in a particular Phase will be compatible with the Master Plan, and to the extent feasible, adjacent existing uses, and will result in the overall Project meeting its obligations with respect to the provision of park land and improvements and other public infrastructure, as further described in Article 3 below. The first and each subsequent Specific Development Plan/Use Permit submitted to the City by any of the Developers for any portion of the Project shall demonstrate consistency with the Phasing Plan, as it may be revised from time to time.

2.5. Applicable Law. Prior to the Effective Date of this Agreement, the Parties shall prepare two (2) sets of the Project Approvals and Applicable Law applicable to the Project as of the Effective Date, one (1) set for City and one (1) set for each Developer, to which shall be added from time to time, Subsequent Project Approvals, so that if it becomes necessary in the future to refer to any of the Project Approvals or Applicable Law, there will be a common set

available to the Parties. Failure to include in the sets of Project Approvals and Applicable Law any rule, regulation, policy, standard or specification that is within the Applicable Law and Project Approvals as described in this Agreement shall not affect the applicability of such rule, regulation, policy, standard or specification.

2.6. New City Laws; Reservations of Authority. New City Laws shall not be applicable to the Property except as otherwise provided herein. The parties acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions contained in this Agreement are intended to reserve to City all of its police power which cannot be so limited. This Agreement shall be construed to reserve to City all such power and authority which cannot be restricted by contract. Notwithstanding any other provision of this Agreement to the contrary, the following regulations and provisions shall apply to the development of the Property:

2.6.1 Processing Fees and charges of every kind and nature imposed by City, including planning processing deposits, to cover the actual costs to City of processing applications for Project Approvals or for monitoring compliance with any Project Approvals granted or issued, as such fees and charges are adjusted from time to time.

2.6.2 Regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are uniformly applied on a City-wide basis to all substantially similar types of Development Projects and properties.

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

2.6.4 New City Laws which may be in conflict with this Agreement or the Project Approvals but which are necessary to protect persons or property from dangerous or hazardous conditions which create a threat to the public health or safety or create a physical risk, based on findings by the City Council identifying the dangerous or hazardous conditions requiring such changes in the law, why there are no feasible alternatives to the imposition of such changes, and how such changes would alleviate the dangerous or hazardous condition.

2.6.5 New City Laws applicable to the Property, which do not conflict with this Agreement or the Project Approvals, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of Development Projects and properties.

2.6.6 Connection Fees then applicable in City at the time of permit application.

2.6.7 New City Laws establishing or otherwise related to green building standards for residential development, as in effect at the time of Developers' application for the applicable building permit.

2.7. Developer's Contest of Applicability of New City Laws. If any Developer believes that the application by the City of a New City Law to the Project is inconsistent with the

Project Approvals or the terms of this Agreement and desires to contest such application, Developer shall give written notice to the City of the inconsistency in accordance with this Section 2.7. Developer's written notice shall inform the City of the factual and legal reasons why the Developer believes the City cannot apply the New City Law to the Project consistent with the Project Approvals and this Agreement. The City shall respond to the Developer's notice within forty-five (45) days of receipt of such notice. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City's response with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. If no mutually acceptable solution is reached at the conclusion of the meet and confer period, Developer may file legal action challenging such application in accordance with Section 5.3.1. [Legal Actions] below. If it is determined at the conclusion of such legal action that such New City Laws apply to the Project, and if such New City Laws have the effect of materially impeding or preventing development of the Project in accordance with this Agreement and the Project Approvals, then each Developer may request the City (i) to amend this Agreement in accordance with the Development Agreement Law and/or to amend the Project Approvals or Applicable City Regulations or (ii) to terminate this Agreement by mutual agreement, which request shall not be unreasonably denied, by giving a written request for termination to the City not earlier than sixty (60) days, nor more than one hundred eighty (180) days, after the determination that such New City Laws apply to the Project has become final, provided, however, that before any Developer shall submit such request for termination, the requesting Developer shall give at least sixty (60) days written notice of its intent to request termination to the City, and if the City modifies the New City Laws so that they no longer prevent or materially impede development of the Project in accordance with this Agreement and the Project Approvals, Developers shall no longer have the right to request termination of this Agreement. This Agreement may be terminated as to any Developer only by mutual written agreement of the City and such Developer.

2.8. Intentionally Deleted.

2.9. New Other Laws. The City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by local (other than City), regional, or State or Federal laws or regulations enacted after the Effective Date ("New Other Laws"), as provided in Government Code section 65869.5. In the event New Other Laws (i) prevent or preclude compliance with one or more provisions of the Project Approvals or this Development Agreement, or (ii) have the effect of materially impeding or preventing development of the Project in accordance with the Project Approvals or this Agreement, any Developer wishing to contest such New Other Law shall give written notice to the City of such issue. Developer's written notice shall explain how the application of New Other Laws would affect the Developer's rights under the Agreement. Thereafter, the Parties shall meet and confer in good faith for a period of sixty (60) days to determine whether any modification, extension or suspension of this Agreement is necessary to comply with such New Other Laws. It is the intent of the Parties that any such modification or suspension be limited to that which is necessary, and to preserve to the extent possible the original intent of the Parties in entering into this Development Agreement. If the Parties fail to find a mutually agreeable solution to modify, extend or suspend the Agreement in order to achieve compliance with such New Other Laws, then Developer shall have the right, at its sole election, to either: (i) pursue litigation pursuant to Section 5.3. [Legal Actions], or (ii) to request that City terminate this Agreement by mutual agreement in the same manner as provided in Section 2.7. above with

respect to New City Laws. Nothing in this Agreement shall be deemed a waiver of Developer's right to challenge or contest the validity or applicability of any New Other Laws.

2.10. Initiatives and Referenda. If any New City Law is enacted or imposed by a citizen-sponsored initiative or referendum, which New City Law would conflict with the Project Approvals, Applicable City Regulations or this Agreement or reduce the development rights or assurances provided by this Agreement, such New City Law shall not apply to the Property or Project; provided, however, the Parties acknowledge that City's approval of this Agreement is a legislative action subject to referendum. Without limiting the generality of any 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 develop or use the Property 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 limitations that may affect the Project. City shall cooperate with Developers and, at the requesting Developer or Developers' expense, shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect. City, except as otherwise provided herein and except to submit to vote of the electorate initiatives and referendums required by law to be placed on a ballot and fulfill any legal responsibility to defend a ballot measure passed by its voters, shall not support, adopt or enact any New City Law, or take any other action which would violate the express provisions or spirit and intent of this Agreement.

2.11. Regulation by Other Public Agencies. Developers acknowledge and agree that other public agencies not within the control of City, including San Mateo-Foster City School District, San Mateo Union High School District, EMID, the Bay Area Air Quality Management District, the San Francisco Bay Regional Water Quality Control Board, and the California Department of Transportation, 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. Each Developer shall, at the time required by Developer in accordance with Developer's construction schedule, apply for all such other permits and approvals as may be required by other governmental or quasi-governmental entities, including EMID, the San Mateo-Foster City School District, the San Mateo Union High School District, the Bay Area Air Quality Management District, the San Francisco Bay Regional Water Quality Control Board, and the California Department of Transportation in connection with the development of, or the provision of services to, the Project. Each Developer shall also pay all required fees when due to such public agencies and provide proof of payment of such fees to City prior to or concurrently with issuance of building permits for any portion of the Project for which such fees are due. Developers acknowledge that City does not control the amount of any such fees. City shall 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, or to amend any City policy, regulation or ordinance in connection therewith. In the event that School Fees are imposed upon Developers that are in excess of those required by state law and Developers wish to object to such School Fees, Developers may pay such fees under protest. The City agrees not to delay issuance of permits under these circumstances.

2.12. Life of Existing Approvals. After the Term of the Agreement expires, if a Developer has redeveloped its Property consistent with the Master Plan, the Master Plan shall continue to control until such time as the City Council changes the underlying land use designations or entitlements applicable to the Property consistent with all applicable law and procedure. After the Term of the Agreement expires or in the event of other full or partial termination of the Agreement as to one or more Developers, if such a Developer has not redeveloped its Property consistent with the Master Plan, then the Master Plan, and any other Project Approvals which have not already terminated shall be deemed terminated and the zoning for such Property shall be the C-M Commercial Mix District that was in effect prior to Zoning Amendment until such time as the City Council changes the underlying land use designations or entitlements applicable to such Property consistent with all applicable law and procedure. Once the Master Plan and other Project Approvals have expired, any and all uses permitted prior to the Zoning Amendment shall be allowed until such time as the City Council changes the underlying land use designations or entitlements applicable to the Property consistent with all applicable law and procedure.

2.13. Insurance Requirements. Each Developer shall procure and maintain, or cause its contractor(s) to procure and maintain for the duration of this Agreement a commercial general liability policy in an amount not less than Two Million Dollars ($2,000,000) combined single limit, including contractual liability together with a comprehensive automobile liability policy in the amount of One Million Dollars ($1,000,000), 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. Each Developer shall furnish at City's request appropriate certificate(s) of insurance evidencing the insurance coverage required by such Developer hereunder, and the City and its elected and appointed officials, officers, agents, employees, contractors and representatives (collectively, "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 Developer. 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.

2.14. City of Foster City Business License. Each Developer, at its expense, shall obtain and maintain a business license issued by the City of Foster City during the Term.

2.15. Sales Tax Point of Sale Designation. Each Developer shall include a provision in its construction documents requiring contractors to use good faith efforts to require all persons and entities providing bulk lumber, concrete, structural steel and pre-fabricated building components, such as roof trusses, to be used in connection with the construction and development of, or incorporated into, the Project, to either (1) obtain a use tax direct payment permit or (2) elect to obtain a sub-permit for the job site of a contract valued at $5 million or

more 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.

2.16. Estero Municipal Improvement District. EMID provides sanitary sewer and water services within City. Developers, at their sole expense, shall work cooperatively with EMID to provide sanitary and water services in connection with the Project.

2.17. Utilities. PG&E provides electricity and natural gas services within City. Developers shall, at their sole expense, work with PG&E to provide all electricity and natural gas utilities needed to serve the Project.

2.18. Telephone, Data and Cable Services. Developers shall, at their sole expense, work with applicable service providers to provide telephone, data, and cable television services to serve the Project.

ARTICLE 3: PUBLIC BENEFITS

3.1. Public Benefits Obligations. Each Developer's obligation to provide the public benefits set forth in this Article 3 shall be triggered when a Developer applies for and processes for approval or issuance the applicable subdivision map or permits as more particularly described below.

3.2. Required Park Obligation. In satisfying the Required Park Obligation, each Developer shall meet the requirements of Chapter 16.36 of the Foster City Municipal Code, except that: (i) the definition of Average Household Size in this Agreement shall control and (ii) the Developers shall be required to grant public easements and improve the Park Plaza Site as provided in Section 3.3, below, regardless of whether the Developer is proposing residential or commercial development. The Required Park Obligation will be determined by the Planning Commission at the time it reviews and approves each Developer's application for a Specific Development Plan/Use Permit pursuant to Chapter 16.36 of the Foster City Municipal Code.

3.3. Grant of Plaza Easements. Notwithstanding any other provision hereof to the contrary, AMB and Northwestern shall be required to grant the public Plaza Easements, in substantially in the form attached hereto as Exhibit K [Form of Plaza Easement], over that portion of AMB's Property and Northwestern's Property, respectively, within the Park Plaza Site (each, a "Plaza Easement"), regardless of whether AMB and/or Northwestern develop any residential units or Live/Work Units on the AMB Property or the Northwestern Property, as applicable. AMB and Northwestern each shall execute the Plaza Easements and submit them to the City on or before the date of the City's approval of AMB or Northwestern's respective applications for a final map and shall record the Plaza Easement concurrent with the recordation of the final map. Notwithstanding the foregoing, with respect to any Phase for which a final map is not required, AMB or Northwestern shall execute and submit to the City the Plaza Easement prior to issuance of a building permit for such Phase, and the City shall record the Plaza Easement upon issuance of certificate of occupancy. Neither AMB or Northwestern shall be required to dedicate any park land or grant any park land easements other than the Plaza Easement described above; provided, however, AMB and Northwestern shall comply with Chapter 16.36 of the Foster City Municipal Code and, subject to the approval of the City, either

AMB or Northwestern may, at their discretion, provide additional park land or park land easements and/or improvements consistent with Chapter 16.36. FCEPP is not required to satisfy its Required Park Obligation through the dedication of any public park land or public park land easements; provided, however, subject to approval by the City, FCEPP may, at its discretion, provide park land or park land easements and/or public park improvements consistent with Chapter 16.36 of the Foster City Municipal Code.

3.3.1. Park Plaza Site Improvements. AMB and Northwestern shall propose in their respective applications for a Specific Development Plan/Use Permit the amenities to be constructed by AMB and Northwestern, as applicable, and made available to the public in the portion of the Park Plaza Site on AMB's Property or Northwestern's Property, as applicable. The City shall consider in good faith the Developer's proposal for such amenities and the final Specific Development Plan/Use Permit shall specify the Developer's obligations to construct and provide amenities available to the public on the portion of the Park Plaza Site on AMB's Property or Northwestern's Property, as applicable. The approximate location of the Park Plaza Site is specified in the Master Plan. Minor variations in the location and configuration of the Park Plaza Site that do not reduce its overall size shall be considered a Minor Amendment, consistent with Section 4.1.1 [Minor Amendment].

3.3.1.1. Timing of Park Construction. Park Plaza Site improvements shall be constructed by AMB and Northwestern in Phases pursuant to the Phasing Plan and the Specific Development Plan/Use Permits. Each Phase of the Park Plaza Site improvements shall be substantially completed, as determined by City, and shall be accessible to the public prior to issuance of the first certificate of occupancy for any portion of the improvements to be constructed on the AMB Property or Northwestern Property, as applicable. AMB and Northwestern shall install signage near each amenity stating that each amenity is "available for use by residents and the general public between the hours of 6:00 AM and 9:00 PM."

3.3.1.2. Maintenance. With each Specific Development Plan/Use Permit application submitted by AMB or Northwestern, as applicable, shall submit to the satisfaction of the City a plan for the perpetual maintenance and operation of the applicable Phase of the Park Plaza Site and improvements thereon. Upon City approval, such maintenance and operation plan shall be implemented by AMB or Northwestern, as applicable, at its sole cost, prior to opening the Park Plaza Site, or portion thereof, to the public. AMB and/or Northwestern shall have the right to transfer all maintenance and operations obligations and costs to the Master Property Owners' Association pursuant to an agreement in form acceptable to the City Attorney.

3.4. Affordable Housing. In accordance with the City's Housing Element Policy H-E-2, twenty percent (20%) of all residential units in each Phase, including the Live/Work Units, shall be included in an Affordable Housing program; provided, however, all Affordable Units will be residential units and not Live/Work Units. Each Developer shall satisfy this requirement with respect to the construction of affordable units in its Phase and may contemplate rental, sale, or a combination of both; provided, however, that all rental units developed in satisfaction of this Section 3.4 shall be available for rental by income-qualified households at "affordable rents" as defined in Health and Safety Code section 50053 and shall be subject to a recorded affordability covenant for a term of at least 55 years, and that all ownership housing

developed in satisfaction of this Section 3.4 shall be available to income-qualified households at "affordable housing cost" as defined in Health and Safety Code section 50052.5 and shall be subject to a recorded affordability covenant for a term of at least 45 years. The final mix of Moderate, Low and Very Low income units shall be determined by the City at the Specific Development Plan/Use Permit stage, based on the City's need as specified in the then current unmet fair share housing obligation as set forth in the Regional Housing Needs Assessment issued by the Association of Bay Area Governments or any successor agency. The affordability covenants at minimum shall be consistent with State law.

3.4.1. Dispersal and Quality of Affordable Units. Each Property that includes residential units shall meet the Affordable Housing requirements of this Agreement. Within each Phase there shall be no physical concentration of Affordable Units. The Affordable Units shall be dispersed equally throughout all buildings and on all floors of such buildings and shall include a proportionate mix of unit sizes identical to the mix of units available as market rate units. All Affordable Units shall be indistinguishable from the exterior or the interior and shall be interchangeable with the market rate units. Market rate units and Affordable Units shall be identical in quality, design and materials.

3.4.2. Future Affordable Housing Agreements. The terms specified in this Section 3.4 and other terms (including, for rental units, annual recertification requirements) shall be included in a separate Affordable Housing agreement ("Affordable Housing Covenant") that will reflect the unit mix and specific development plan proposed as part of each Specific Development Plan/Use Permit application. Such Affordable Housing Covenant shall be in a form reasonably acceptable to the City Attorney, shall be executed and recorded prior to issuance of a building permit for any residential component of the Phase, and shall ensure the long-term affordability of the Affordable Units in the applicable Phase for the term and in the manner described herein.

3.4.3. Marketing Plan. Prior to the rental or sale of any Affordable Unit, Developer shall submit for approval by the City a plan for marketing the Affordable Units (the "Marketing Plan") The Marketing Plan shall include a plan for publicizing the availability of the Affordable Units within the City, such as notices within City-sponsored newsletters, newspaper advertising in local newspapers and notices in City facilities. To the extent permitted by law, the Marketing Plan shall be consistent with the City's Preference Policy approved by Resolution No. 2000-123.

3.4.4. Agency Assistance. The City shall cause the Foster City Community Development Agency to consider use of redevelopment affordable housing set-aside funds to assist with the Affordable Units within the Project, including potentially applying such funds against City fees and other costs directly related to the construction and development of the Affordable Units; provided, however, that the Redevelopment Agency shall be under no obligation to provide any such set-aside funds to any Developer.

3.5. On-Site Circulation Improvements. Each Developer, in accordance with the Phasing Plan, shall construct the On-Site Circulation Improvements as shown on the Phasing Plan ("On-Site Circulation Improvements"). The "On-Site Circulation Improvements" shall consist of the following:

3.5.1. Bus Turnout. A designated bus stop for SAMTRANS at approximately the location depicted on Sheets CP1-8 of the Phasing Plan ("Bus Turnout"). Detailed design for the Bus Turnout will be submitted with the Specific Development Permit/Use Permit for development on Phase D as defined on the Phasing Plan..

3.5.2. Shuttle Stop. A designated stop for shuttle buses at approximately the location depicted on Sheets CP1-8 of the Phasing Plan ("Shuttle Stop"). Detailed design for the Shuttle Stop will be submitted with the Specific Development Permit/Use Permit for Phase A as defined on the Phasing Plan.

3.5.3. Electrical Backup. Full service electrical backup from the generator at Lift Station #1 (Pilgrim Drive/East Hillside Boulevard) for traffic signals at Pilgrim Drive/East Hillside Boulevard and at Triton Drive/Foster City Boulevard as described in Note 6 and generally shown on Sheet C2 of the Phasing Plan ("Electrical Back-Up"). Detailed design for the Electrical Back-Up shall be submitted with the Specific Development Permit/Use Permit for Phase A as defined on the Phasing Plan.

3.5.4. Other On-Site Circulation Improvements. The other On-Site Circulation Improvements as shown in the Phasing Plan Sheets CP 1-8.

All costs of designing, constructing and installing the On-Site Circulation Improvements shall be borne exclusively by Developers. Publicly and privately owned infrastructure on the Property, including the On-Site Circulation Improvements, are depicted in the Phasing Plan. Currently contemplated private easements and lot line adjustments, including easements for utilities on the Property are depicted on Sheets LL1-8 of the Phasing Plan, which shall be revised and updated as appropriate as Subsequent Project Approvals are processed.

3.5.5. Maintenance Obligations for On-Site Circulation Improvements. Each Developer shall be responsible for maintenance of On-Site Circulation Improvements serving the Phase or Phases of the Project developed by such Developer, unless and to the extent that such maintenance obligations shall have been assumed by the Master Property Owners' Association. Except for any warranty period claims provided for in any public improvement agreements, City shall be responsible for maintenance of the Electrical Backup following City's acceptance thereof. Developer at its expense shall maintain, repair and replace as necessary all other On-Site Circulation Improvements, unless Developer shall transfer such obligations to the Master Property Owners' Association, which transfer shall be subject to City approval.

3.6. Off-Site Traffic Improvements. Fehr & Peers has prepared two documents titled "Foster City Multi-Project Traffic Analysis," dated December 2008, and "Foster City Multi-Project Traffic Analysis Engineering Feasibility Study," dated May 2009, both incorporated herein by this reference (collectively, the "Fehr & Peers Study"), which identify off-site traffic improvements necessary to serve the Project ("Off-Site Traffic Improvements"). The Off-Site Traffic Improvements are identified, along with their anticipated costs for construction, and the percentage responsibility of the Project on Exhibit H [Off-Site Traffic Improvements]. Each Developer shall pay the following amounts prior to execution by the City of this Agreement to fund design of the Off-Site Traffic Improvements: (i) Northwestern shall pay forty-six thousand eight hundred dollars ($46,800); (ii) FCEP shall pay twenty three thousand eight hundred dollars

($23,800) and (iii) AMB shall pay twenty nine thousand four hundred dollars ($29,400) (collectively, "Traffic Design Deposit"). In addition, at the time the first application for building permit is submitted to the City, the Developer who submits such application ("Phase 1 Developer") shall pay the following amounts to the City: (i) fifty-nine thousand dollars ($59,000) for the design of the Shared Off-Site Traffic Improvements, as defined on Exhibit H and (ii) one hundred ninety one thousand dollars ($191,000) for the design of the Triton Drive Widening Project, as that term is defined on Exhibit H (collectively, "Traffic Design Payments") The Phase 1 Developer shall also pay the following sums prior to issuance of the first building permit on its portion of the Project: (i) nine hundred eighty five thousand dollars ($985,000) for the construction of the Shared Off-Site Traffic Improvements and (ii) one million two hundred fifty nine thousand dollars ($1,259,000) for the Triton Drive Widening Project (collectively, "Traffic Construction Payments"). The Traffic Design Deposit, Traffic Design Payments, and Traffic Construction Payments in the total amount of two million five hundred ninety four thousand dollars ($2,594,000) are collectively the Project's "Fair Share Contribution for Off-site Traffic Improvements." The City agrees to use the Fair Share Contribution for Off-Site Traffic Improvements solely for the purposes of design and construction of the Off-Site Traffic Improvements. Upon payment in full of the Fair Share Contribution for Off-Site Traffic Improvements to the City, the City shall issue certificate(s) of occupancy for any and all structures in the Project prior to completion of any or all of the required Off-Site Traffic Improvements, so long as all other fees have been paid and legal requirements have been satisfied for issuance of a certificate of occupancy. Upon payment of the Fair Share Contribution for Off-Site Traffic Improvements, Developers shall have no further obligation to the City for the costs of design or construction of the Shared Off-Site Traffic Improvements, regardless if such costs of design and construction exceed the estimate set forth on Exhibit H. In the event actual design and construction costs for the Triton Drive Widening Project exceed the estimate of one million four hundred fifty thousand dollars ($1,450,000) set forth on Exhibit H, however, the City shall submit an invoice for the difference to the Phase 1 Developer with a copy to all notice recipients in Section 7.5 ("Triton Drive Cost Invoice"), and the Phase 1 Developer shall pay the Triton Drive Cost Invoice within sixty (60) days of receipt. To the extent the Phase 1 Developer does not pay the Triton Drive Cost Invoice within such time, the unpaid amount shall accrue interest at the lesser of ten percent (10%) per annum or the highest rate allowed by law, and the City, in addition to any other rights and remedies, shall be entitled to withhold issuance of any further building permits, certificates of occupancy or other permits or entitlements for the Project until the amount has been paid in full. The City shall notify all notice recipients in Section 7.5 if the Phase 1 Developer has not timely paid the Triton Drive Cost Invoice, shall reference this Section 3.6 and shall provide at least thirty (30) days notice of its intent to withhold any permits. The Developers have the reasonable right to request and review the City's documentation of actual project costs in connection with the Triton Drive Widening Project. In the event the actual design and construction cost for either the Shared Off-Site Traffic Improvements or the Triton Drive Widening Project are less than the estimate set forth of Exhibit H (i.e., $1,144,000 and $1,450,000, respectively), then the City shall reimburse the Phase 1 Developer the difference. With respect to the Shared Off-Site Traffic Improvements, such reimbursement shall be a pro rata share of the difference based on the Project's percentage contribution set forth on Exhibit H. (*For illustration only, if the actual costs of all of the Shared Off-Site Traffic Improvement was $100,000 less than the estimated cost on Exhibit H, and the Project's fair share was 22.70%, the City would reimburse the Phase 1 Developer $22,700*).

3.6.1. Reimbursement By Later Phases of the Project. The Parties anticipate that each Developer other than the Phase 1 Developer shall reimburse the Phase 1 Developer for its fair share contribution for Off-Site Traffic Improvements ("Fair Share Contribution for Off-Site Traffic Improvements") under the terms of an agreement to be entered into among the Developers ("Cooperation Agreement"). City will not be a party to the Cooperation Agreement and shall have no obligation to enforce any of its terms.

3.6.2. Reimbursement from Future Developers. If and to the extent City approves future development projects in the City, other than those projects identified in the Fehr & Peers Study, and City determines that such future additional projects impact the Shared Off-Site Traffic Improvements ("Future Contributing Development"), the City shall use diligent, good faith efforts to collect from such Future Contributing Development a fair share of the estimated or actual construction costs of the Shared Off-Site Traffic Improvements. If, after completion of all Off-Site Traffic Improvements, the amount of total payments received from Developers under this Agreement, other developers identified in the Fehr & Peers Study, and Future Contributing Developers exceeds the actual cost of the Off-Site Traffic Improvements, the City shall reimburse the Phase 1 Developer a share of such excess payments, based on the Project's pro rata share of actual costs, in the same manner as provided in Section 3.6 above.

3.6.3. Reimbursement from Measure A Funds for Triton Drive Widening Project. If and to the extent City receives County Measure A Funds which are earmarked for the Triton Drive Widening Project, the City shall apply such Measure A funds received to either (i) reduce the total cost of the Triton Drive Widening Project set forth on Exhibit H or (ii) to reimburse the Phase 1 Developer, if the Phase 1 Developer has already paid the Traffic Construction Payments as of the date the City receives Measure A Funds. If Measure A funds are not available for the Triton Drive Widening Project, then all costs of Triton Drive Widening Project shall be borne solely by the Developers pursuant to Section 3.6.

3.6.4. Triton Drive Widening Project Right of Way Acquisition. Developers shall, at their sole cost and expense, make best efforts to acquire all necessary rights of way for the Triton Drive Widening Project ("Triton Drive ROW") within the time necessary to allow for the construction concurrent with the development contemplated in the Phasing Plan. If requested by Developers, where the affected property owner has rejected an offer by Developers based upon fair market value as determined by an appraisal prepared at Developers' expense by a City approved appraiser in accordance with appraisal instructions approved by City, and upon Developers' provision of adequate funding, City shall promptly and timely negotiate and seek the purchase at Developers' expense of the necessary real property interests to allow construction of the Triton Drive Widening Project as required by the Project Approvals. If City fails to acquire the necessary property interests by negotiation, City may consider use of its power of eminent domain to acquire such real property interests. The Phase 1 Developer shall pay, within sixty (60) days of City's written demand, all costs associated with any such acquisition or condemnation proceedings, including any attorneys fees, litigation costs, just compensation amounts, severance damages, or loss of business good will, with any reimbursement to the Phase 1 Developer by the other Developers being provided for in the Cooperation Agreement. Nothing herein is intended to or shall prejudge or commit City regarding any findings and determinations required to be made in connection with adoption of a resolution of necessity. Should City elect not to proceed with condemnation, as evidenced by City not filing an eminent

domain action within the period that ends on the later of (a) the date of issuance of the first building permit to the Phase 1 Developer, or (b) the date that is three years following Developers' request that City acquire the Triton Drive ROW pursuant to this Section 3.6.4, Developers shall be relieved of their obligations with respect to the Triton Drive Widening Project. In connection with any Triton Drive Widening Project, City shall allow the owner of the Valero Property to replace any signage required to be removed as a result of the widening and construction. Two hundred and forty thousand dollars ($240,000) has been included in the total construction cost amount for the Triton Drive Widening Project set forth on Exhibit H ("ROW Acquisition Amount"). The ROW Acquisition Amount has not been calculated based on a current appraisal of the value of the Valero Property and in no way reflects any calculation by the Parties of the current fair market value of such property; rather, the ROW Acquisition Amount reflects the Parties' attempt to include in the construction cost budget a figure large enough to accommodate potential variations in land value over time. If and to the extent the Developers pay any amount up to the ROW Acquisition Amount for the acquisition of the Triton Drive ROW pursuant to this Section 3.6.4, the Phase 1 Developer may reduce the Traffic Construction Payments by a like amount. Any Triton Drive Widening Project acquisition costs in excess of the ROW Acquisition Amount shall be borne by Phase 1 Developer at its expense without any reduction in the Construction Payments or any other amounts due from the Phase 1 Developer or any of the other Developers under this Agreement.

3.6.5. Right to Assign Reimbursement Among Developers. To the extent a Developer has paid the Phase 1 Developer its pro rata share of the Off-Site Traffic Improvements under the terms of the Cooperation Agreement, the Phase 1 Developer and the paying Developer(s) may enter into a written assignment of all or a portion of the Phase 1 Developer's right to receive any reimbursement under Section 3.6, 3.6.2 or Section 3.6.3. The assignment agreement shall be in a form reasonably acceptable to the City Attorney. If the City has received such written assignment agreement, the City shall pay such reimbursement to the Phase 1 Developer, or to the Developer(s) indicated in the fully executed assignment agreement, all in accordance with the terms of such written assignment.

3.7. Shuttle Bus Contribution. The Developer of any component of the Project that includes office uses shall contribute to operation of a peak-hour shuttle and the Developer of any component of the Project that includes residential uses shall contribute to operation of a mid-day shuttle, in amounts to be determined by the City in its reasonable discretion, consistent with the Transportation Demand Management (TDM) Plan as required by the City/County Association of Governments. The timing of payment and amounts of specific shuttle bus operations payments shall be specified at the Specific Development Plan/Use Permit stage. As reflected in the Specific Development Plan/Use Permit condition, Developers may propose, and the City may approve or disapprove, alternative means of satisfying TDM requirements. In seeking approval of alternative means of satisfying TDM requirements, the City shall only require mitigation measures that are consistent with TDM requirements. Developers shall have the right to transfer the obligation described in this Section 3.7 to the Master Property Owners' Association pursuant to an assignment and assumption agreement in a form reasonably acceptable to the City Attorney.

3.8. Alternate Office Lease. Northwestern, or the successor owner of Northwestern's Property, shall coordinate with the City to offer to lease ground floor space within a residential

or office building designated by Northwestern on Northwestern's Property (the "Alternate Office Lease") for use by (i) a non-profit, transit-related operator ("Transit Operator") or, in the event that no Transit Operator wishes to enter into such an Alternate Office Lease, (ii) a non-profit entity that coordinates volunteer participation by school-age children ("Volunteer Coordinator"). If such a Transit Operator or Volunteer Coordinator agrees to enter into an Alternate Office Lease, Northwestern, or Northwestern's successor, shall provide, in Warm Shell Condition, no more than five hundred (500) feet of space to a Transit Operator or no more than seven hundred fifty (750) feet to a Volunteer Coordinator. The Alternate Office Lease shall provide that an applicable Transit Operator or Volunteer Coordinator lessee must (i) obtain and maintain general liability insurance in commercially reasonable amounts, provide Northwestern, or its designee, a certificate of insurance upon request and name Northwestern, or its designee, as an additional named insured ("AOL Insurance") and (ii) pay to Northwestern, or its designee, a monthly operating expense payment equal to fifty (50) cents per square foot of leased space, adjusted annually by CPI ("AOL Operating Expenses"). Except as otherwise provided in the foregoing sentence, the Alternate Office Lease shall provide for free rent for the entire duration of the term of such Alternate Office Lease. The City shall have no responsibility for paying any portion of insurance, taxes or operating expenses. Northwestern has the right to terminate an Alternate Office Lease for failure to provide AOL Insurance or timely pay AOL Operating Expenses. If neither a Transit Operator nor a Volunteer Coordinator has entered into an Alternate Office Lease at the time that Northwestern, or Northwestern's successor, has obtained the final Certificate of Occupancy for Phase 1, the obligation under this Section 3.8 shall terminate. If an Alternate Office Lease is entered into and the initial Transit Operator or Volunteer Coordinator lessee thereafter vacates the space (or is terminated for failure to provide AOL Insurance or pay AOL Operating Expenses), Northwestern, or Northwestern's successor, shall, within thirty (30) days after such lessee vacates, inform City of the vacancy and shall thereafter diligently and in good faith coordinate with City to identify a qualifying replacement Transit Operator or Volunteer Coordinator lessee. If a qualifying replacement lessee is identified within six (6) months of the date Northwestern or Northwestern's successor notifies City of the vacancy, Northwestern or Northwestern's successor shall enter into a subsequent Alternate Office Lease on the same terms as provided herein for the initial lessee. If the parties are unable to identify a qualifying Transit Operator or Volunteer Coordinator Northwestern within six (6) months of the date of such notice, Northwestern's obligation under this Section 3.8 shall terminate. Northwestern shall not be required to enlarge or alter the space to accommodate any new lessee so long as it maintains it in Warm Shell Condition. The term of the Alternate Office Lease and the requirements of this Section 3.8 shall survive expiration of this Agreement and continue for so long as the initial lessee, or potential subsequent lessee, desires to occupy the space and complies with the requirements of this Section 3.8.

3.9. Bike Path Construction. Specific Development Plan/Use Permits shall include a bicycle circulation plan, subject to City approval through the Use Permit process.

3.10. Water and Sewer Improvements. Developers at their expense shall prepare and submit for approval by the City Engineer a water and sewer pipe flow analysis. Following City Engineer's approval of the flow analysis, Developers at their expense shall install the following infrastructure consistent with the Phasing Plan and the approved flow analysis: (i) replacement and upgrading of eight inch (8") sanitary line in Pilgrim Drive as shown in Sheets C1-9 , (ii) Phase A domestic water pipeline looping north from Triton Drive the waterline parallel to the

Foster City Lagoon as shown on C1-9. During the term of this Agreement, City shall not approve additional development projects within the City to the extent such additional projects would materially compromise EMID's ability to maintain sufficient sewer and water capacity to serve the demand of the Project at the uses and densities set forth in the Master Plan, as described in the EIR and the 2007 Water Supply Assessment memorandum prepared for the Project; provided, however, nothing herein shall be deemed to give the Project priority in the granting of approvals or allocation of sewer and water capacity over any utility, governmental (including schools), or community service uses, such as private hospitals and day care facilities, and City may approve such other development projects and uses regardless of their impact on EMID's ability to maintain sewer and water capacity to serve the demand of the Project. To the extent that any third party shall bring a claim against the City or EMID challenging denial of an approval or water or sewer allocation based on City's obligations under this Section 3.10, Developers shall indemnify, defend with counsel approved by City, and hold harmless City and EMID and their respective officials and employees from and against any such claims and related costs, liabilities and damages, including any awards of attorneys fees. The City shall not require water or sewer improvements in addition to those required by the Master Plan, Project Approvals or this Agreement, except where required by an applicable New City Law or New Other Law.

3.11. Other Infrastructure. Developers at their expense shall perform the following tasks, consistent with the Phasing Plan: (i) conduct a pump capacity study for Lift Station #1 at fully built condition; (ii) drain, investigate and clean all storm water pipes in accordance with Specific Development Plan/Use Permit; (iii) conduct civil design at all Phases to contemplate capacity at full build out; (iv) pile drive area of influence study for determination of parallel domestic/sanitary pipe installation, except that alternate foundation methods may be used if deemed appropriate and non-disruptive to domestic water and sanitary sewer pipelines; and (v) update civil plan with designation of public versus private utilities. Developers agree to grant to City at no cost to City and between the Developers all necessary or desirable easements and cross-easements for the on-site public infrastructure, including for roadways, access, wet or dry utility lines required to accomplish the Master Plan. All such easements shall be in a form reasonably acceptable to the City Attorney.

3.12. Master Property Owners' Association. Consistent with the Phasing Plan, Developers shall grant to the Master Property Owners' Association the Park Plaza Site, landscaped common areas and On-Site Circulation Improvements. Each Developer may create additional, separate sub-associations or other governance entities as necessary or appropriate. Prior to approval of any final map within the Project, Developers shall prepare and submit to the City Manager or his designee for review and approval a plan for the establishment of the Master Property Owners' Association and any additional sub-associations or other governance entities to ensure payment of the on-going costs of operation, maintenance, repair and replacement of the Park Plaza Site park improvements, all other public improvements to be maintained by Developers as provided herein or in the Master Plan or Project Approvals, and all private open space, private recreation and private parks, private landscaped areas and private alleys. Such plan shall demonstrate to the satisfaction of City Manager or his or her designee (in his or her reasonable discretion) that funding of such on-going costs is economically sound and feasible. City shall be named as an express third party beneficiary under all property owner and homeowner association documents with the right to independently enforce such associations' obligation to maintain the Park Plaza Site park improvements and all other public improvements

to be maintained by Developers as provided herein or in the Master Plan or Project Approvals, and all private open space, private recreation and private parks, private landscaped areas and private alleys. The form of Developers' homeowner and property owner association documents, including conditions, covenants and restrictions, shall be subject to review and approval by the City Attorney, not to be unreasonably withheld or delayed.

3.13. City Cooperation in Facilitating Improvements. City, at Developer's expense, agrees to cooperate with Developers in (i) applying for Measure A funds to pay for Master Plan traffic improvements; (ii) using such funds for such purposes if they are awarded; (iii) processing and constructing Master Plan traffic improvements; and (iv) using good faith, reasonable efforts to secure reimbursement from Owing Developers, or any other party within the City, whose fair share contributions of Off-Site Traffic Improvements are paid by other Owed Developers consistent with Section 3.6.

3.14. City to Consider Vacation of Triton Drive. Within sixty (60) days after the City's receipt of written notice from a Developer, City, at Developer's expense, agrees to commence and, subject to the City's reservation of full and complete discretion to make any required findings, to thereafter diligently process to completion the procedures required to vacate that portion of Triton Drive shown on Sheets LL1-8 of the Phasing Plan. The City's efforts to vacate such right of way shall be consistent with all legal requirements, including those imposed by the California Streets and Highways Code. If such portion of Triton Drive is vacated by City, the vacated right of way shall be transferred to the applicable Developers whose real property is contiguous to the vacated right of way as shown on Sheets LL1-8 of the Phasing Plan, and Developers, at their expense, will construct and maintain the On-Site Circulation Improvements and Park Plaza Site improvements on the applicable portions of vacated Triton Drive. The value of the Triton Drive land vacated and conveyed to the applicable Developer(s) shall be deemed equivalent to the value of the new and improved streets to be maintained by the Developers as public right of way and this shall serve as compensation for the vacated land.

3.15. Condemnation. As used herein, "Material Condemnation" means a condemnation of all or a portion of the Property that will have the effect of materially impeding or preventing development of the Project in accordance with this Agreement and the Project Approvals. In the event of a Material Condemnation, each affected Developer may (i) request the City to amend this Agreement in accordance with the Development Agreement Law and/or to amend the Project Approvals or Applicable City Regulations; (ii) decide, in its sole discretion, to challenge the condemnation, or (iii) request that City agree to terminate this Agreement by mutual agreement, which agreement shall not be unreasonably withheld, by giving a written request for termination to the City. If the condemnation is not a Material Condemnation, the affected Developer(s) shall have no right to request termination of this Agreement pursuant to this section. If the condemnation is a Material Condemnation, but the affected Developer(s) chooses to challenge such condemnation, the Term of this Agreement as to any affected Developer shall be extended as set forth in Section 1.3.2.1. [Excused Delay]. The period of delay shall be measured from the date of the filing of the eminent domain complaint to the date a court issues an order of possession in favor of the City or such other condemning agency or the date the condemnation action is dismissed. If the court rejects any right to take challenges and issues an order of possession, the affected Developer(s) shall have the rights described in clauses (i) and (iii) above.

3.16. Acceptance of Public Improvements and Certificate of Satisfaction. Developer's obligations with respect to construction of all public improvements, including performance and labor and materials security and warranty obligations, and City's obligations with respect to acceptance thereof, shall be set forth in a public improvements agreement in a form reasonably acceptable to the City Attorney. Within sixty (60) days after Developer's written request which may be made at any time following acceptance of a public improvement by the City pursuant to such public improvements agreement, the City shall issue a certificate of satisfaction evidencing the satisfaction of the applicable public improvement obligation.

ARTICLE 4: SUBSEQUENT PROJECT APPROVALS

4.1. Amendment. This Agreement may be terminated, modified or amended only by mutual written consent of the Parties hereto or their successors-in-interest or assignees and as further provided below.

4.1.1. Minor Amendment. Any amendment to this Agreement which in the context of the overall Project contemplated by this Agreement, does not substantially affect (i) the Term of this Agreement; (ii) permitted uses of the Property; (iii) provisions for the reservation or dedication of land; (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions; (v) the density or intensity of the use of the Property or the maximum height or size of proposed buildings; (vi) the scope or quality of the On-Site Circulation Improvements or Off-Site Traffic Improvements; (vii) monetary contributions by Developers; or (viii) Developer's Affordable Housing obligations hereunder shall be deemed a "Minor Amendment" and shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. The following modifications to the Project will constitute Minor Amendments: (a) changes in landscaping; (b) variations in the location of structures that do not substantially alter the design concepts of the Master Plan; (c) variations in the location of utilities or other infrastructure connections or facilities not materially affecting design concepts; (d) minor adjustments to the Tentative Map, Final Map or Property legal description; (e) minor variations in the open space configurations that do not reduce the overall size of the Park Plaza Site; and (f) minor modifications to the Phasing Plan as long as Phases continue to operate independently and uses provided in a particular Phase are compatible with the Master Plan and, to the extent feasible, the adjacent existing uses. The City Manager shall have the authority to execute a Minor Amendment or, in his or her discretion, seek approval of a Minor Amendment by City resolution.

4.1.2. Major Amendment. Any amendment to this Agreement other than a Minor Amendment shall be deemed a "Major Amendment" and shall require giving of notice and a public hearing before the Planning Commission and City Council consistent with Government Code sections 65867, 65867.5 and 65868 and Resolution 80-73.

4.2. City Processing of Subsequent Entitlements. The City and Developers agree that Developers must be able to proceed efficiently with the development of the Property and that, accordingly, an efficient City review and land development and construction inspection process is necessary. Accordingly, the City agrees that upon submission by Developers of all appropriate applications and processing fees, City shall, to the full extent allowed by law, promptly and diligently, subject to applicable law, commence and complete all steps necessary to act on

Developers' currently pending applications for Subsequent Project Approvals, including: (i) providing at Developers' expense and subject to Developers' request and prior approval, reasonable overtime staff assistance, additional staff and/or staff consultants for expedited planning and processing of each pending application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such pending application.

4.3. CEQA. The Parties understand that the EIR is intended to be used not only in connection with the Existing Approvals, but also in connection with necessary Subsequent Project Approvals. However, the Parties acknowledge that, depending on the scope of the project described in Developers' applications, certain discretionary Subsequent Project Approvals, may legally require additional analysis under CEQA. Notwithstanding any other provision of this Agreement, nothing contained herein is intended to limit or restrict the discretion of the City to comply with CEQA. However, the City shall not undertake additional environmental review or impose new or additional mitigation measures on the Project other than as required by Public Resources Code section 21166 and CEQA Guidelines section 15162. To the extent supplemental or additional review is required in connection with Subsequent Project Approvals, Developers acknowledges that City may require additional mitigation measures necessary to mitigate significant impacts that were not foreseen at the time this Agreement was executed.

4.4. Term of Tentative Map. The term of any Tentative Maps obtained by the Developers over the Property shall be for a period of five (5) years. An additional two (2) year extension (so that the life of a Tentative Map will extend to a life of seven (7) years) shall be granted by the City Council upon a showing of the applicable Developer's good faith and diligent efforts to obtain final map approval, as reasonably determined by the City Council.

4.5. Term of Subsequent Project Approvals. Except for Tentative Maps, all other Subsequent Project Approvals relating to the Property or any portion thereof, including modifications or amendments thereto, shall be extended to the later of: (i) the expiration of the Term, or (ii) the date provided by applicable law.

4.6. Incorporation of Subsequent Project Approvals. All Subsequent Project Approvals shall be deemed incorporated herein and vested as of the effective date of such approvals and shall be governed by the terms and conditions of this Agreement. Upon request by any Developer, the City and such Developer shall enter into an amendment to this Development Agreement to be recorded against such Developer's Property and identifying and incorporating the specific Subsequent Project Approvals which have been granted with respect to such property. All costs incurred by City in connection with the preparation of such amendment, including attorneys fees, shall be reimbursed by the requesting Developer within ten (10) business days following City's demand therefor.

ARTICLE 5: DISPUTES, DEFAULT, REMEDIES

5.1. Default.

5.1.1. Remedies In General. City and Developers agree that, following notice and expiration of any applicable cure periods, in the event of default by City, the Parties intend

that the primary remedy for Developers shall be specific performance of this Agreement. A claim by a Developer for actual monetary damages against City may only be considered if specific performance is not granted by the Court. In no event shall any Party be entitled to any consequential, punitive or special damages. In the event of any default by a Developer hereunder, City, following notice and expiration of any applicable cure periods, shall be entitled, in addition to its other rights and remedies specified herein, to pursue any remedies available at law or in equity, including recovery of actual damages from the defaulting Developer.

5.1.2. Cure Period. Subject to extensions of time by mutual consent in writing of the Parties and the provisions of Section 1.3.2.1 [Excused Delay] herein, breach of, failure, or delay by any Party to perform any term or condition of this Agreement shall constitute a default. In the event of any alleged default of any term, condition, or obligation of this Agreement, the Party alleging such default shall give the defaulting Party notice in writing specifying the nature of the alleged default and the manner in which such default may be satisfactorily cured ("Notice of Breach"). In the event of default by one of the Developers to this Agreement ("Defaulting Developer"), the other Developers will not be considered to be in default under this Agreement. Enforcement actions against a Defaulting Developer shall not be brought against any Developers not in default. The defaulting Party shall cure the default within forty-five (45) days following receipt of the Notice of Breach, provided, however, if the nature of the alleged default is such that it cannot reasonably be cured within such forty five (45) day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure, provided that if the cure is not diligently prosecuted to completion, then no additional cure period shall be provided. If the alleged failure is cured within the time provided above, then no default shall exist and the noticing Party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a default shall exist under this Agreement and the non-defaulting Party may exercise any of the remedies available under Section 5.1.3 [Procedure for Default by Defaulting Developer] or Section 5.1.4 [Procedure for Default by the City].

5.1.3. Procedure for Default by Defaulting Developer. If Defaulting Developer is alleged to be in default hereunder by one or more of the other Parties to this Agreement, then after notice and expiration of the cure period specified in Section 5.1.2 above, the City may institute legal proceedings against the Defaulting Developer pursuant to this Agreement, and/or give notice of intent to terminate or modify this Agreement to Defaulting Developer pursuant to California Government Code section 65868. Following notice of intent to terminate or modify this Agreement as provided above, the matter shall be scheduled for consideration and review in the manner set forth in Government Code sections 65865, 65867 and 65868 by the City Council within thirty (30) calendar days following the date of delivery of such notice (the "Default Hearing"). Following the consideration of the evidence presented in such review before the City Council and a determination, on the basis of substantial evidence, by a majority vote of the City Council that a default by Defaulting Developer has occurred, the City may give written notice of termination of this Agreement to Defaulting Developer, and this Agreement shall be deemed terminated as to the Defaulting Developer as of the date of delivery of such notice; provided, however, that, if such termination or modification occurs because of a default of Defaulting Developer hereunder after this Agreement has been assigned so that it applies to more than one entity as "Developer," then such termination or modification shall relate only to that specific portion of the Property as may then be owned by the Party that committed a default hereunder

and not to any other portion of the Property owned by a different entity. This Section shall not be interpreted to constitute a waiver of section 65865.1 of the Government Code, but merely to provide the procedure by which the Parties may take the actions set forth in section 65865.1.

5.1.4. Procedure for Default by the City. If the City is alleged by one ore more Developers to be in default under this Agreement, then after notice and expiration of the cure period specified in Section 5.1.2 above, the Developers may enforce the terms of this Agreement by an action at law or in equity, subject to the limitations of Section 5.1.1 [Remedies in General].

5.1.5. Annual Review. Evidence of default may also arise in the course of the regularly scheduled annual review of this Agreement pursuant to California Government Code section 65865.1 as described in Section 5.2. [Annual Review] herein. If any Party alleges that another Party is in default following the completion of the normally scheduled annual review, such Party may then give the other a written Notice of Breach, in which event the provisions of this Section 5.1 [Default] shall apply. In addition, the regularly scheduled annual review of this Agreement may, following compliance with the requirements of Section 5.1.2 [Cure Period], serve as the Default Hearing for any alleged default by Developer as described in Section 5.1.3. [Procedure for Default by Defaulting Developer] herein.

5.2. Annual Review.

5.2.1. Purpose. As required by California Government Code section 65865.1 and Resolution 80-73, the 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 twelve (12) months from the Effective Date to determine good faith compliance with this Agreement. Specifically, the City's annual review shall be conducted for the purposes of determining compliance by the respective Developers with their individual obligations under this Agreement. Each annual review shall also document (i) the status of efforts and progress in processing, construction and selling units and square footage allocated under the Agreement and/or (ii) any extension of the Term of this Agreement pursuant to Section 1.3.2.

5.2.2. Conduct of Annual Review. The annual review shall be conducted as provided herein:

(a) By October 31st of each year, each Developer shall provide documentation of its compliance with this Agreement during the previous calendar year, including a completed Annual Review Form in the form provided in Exhibit J [Annual Review Form] and such other information as may be requested by the Community Development Director. If the Planning Commission finds good faith compliance by Developers with the terms of this Agreement, the Community Development Director shall so notify Developers in writing and the review for that period shall be concluded. If the Planning Commission is not satisfied that one or more Developers are performing in accordance with the terms and conditions of this Agreement, or if the Planning Commission has any doubts concerning a Developer's performance, the Planning Commission shall direct the Community Development Director to prepare a written report and refer the matter to the City Council and notify Developer in writing at least ten (10) days in advance of the time at which the matter will be considered by the City Council. This notice shall include the time and place of public hearing, a copy of the

Community Development Director's report and recommendations, if any, and any other information the Community Development Director deems necessary to inform Developers of the nature of the proceeding.

(b) The City Council shall conduct a public hearing at which Developers must submit evidence that they have complied in good faith with the terms and conditions of this Agreement. Such evidence shall include the following:

(c) Economic factors relevant to development in the Mid-Peninsula region generally and Foster City in particular, including vacancy rates, construction costs, and average rental rates for different product types within the Master Plan (i.e., residential, commercial, retail);

(d) A summary of all efforts made in the prior year to market and sell or lease residential, commercial, and retail space in the Project, as well as to process required permits and/or develop the remaining undeveloped properties to reach the commercial/retail and residential densities allowed pursuant to this Agreement;

(e) A summary of specific strategies to be followed in the coming year intended to facilitate the processing of permits and/or actual project construction; and

(f) Review of compliance with the Phasing Plan.

Developers shall be given an opportunity to be heard at the hearing. The findings of the City Council on whether one or more of Developers have complied with this Agreement for the period under review shall be based upon substantial evidence in the record. If the City Council determines, based upon substantial evidence, that the Developers have complied in good faith with the terms and conditions of this Agreement, the review for that period shall be concluded.

(g) If the City Council determines, based upon substantial evidence in the record, that there are significant questions as to whether a Developer has complied with the terms and conditions of this Agreement, the City Council, at its option, may continue the hearing and may notify Developer of the City's intent to meet and confer with Developer within thirty (30) days of such determination, prior to taking further action. Following such meeting, the City Council shall resume the hearing in order to further consider the matter and to make a determination regarding Developer's good faith compliance with the terms and conditions of the Agreement and to take those actions it deems appropriate, including but not limited to, modification or termination of this Agreement, in accordance with California Government Code section 65865.1. Alternatively, the City Council may make its determination of non-compliance and take such actions it deems appropriate at the conclusion of its initial hearing, without continuing the hearing in order to meet and confer with the Developer.

5.2.3. Failure to Conduct Annual Review. Failure of City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement nor shall a Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

5.3. Legal Actions.

5.3.1. By a Party. In addition to any other rights or remedies, any 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 hereof, or to obtain any other remedies consistent with the purpose of this Agreement except as limited herein. Any such legal action shall be brought in the Superior Court for San Mateo, California.

5.3.2. Third Party Claims. City and Developers, at Developers' sole cost and expense, shall cooperate in the event of any court action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, any Existing Approvals or any Subsequent Project Approvals and City shall, upon request of one or more Developers, appear in the action and defend its decision, except that City shall not be required to be an advocate for any Developer. To the extent one or more Developers determine to contest or defend such litigation challenges or requests that City cooperate in those defense efforts, the Developer or Developers opting to defend such challenges shall reimburse City, within ten (10) business days following City's written demand therefor, which may be made from time to time during the course of such litigation, all costs incurred by City in connection with the litigation challenge, including City's administrative, legal and court costs, provided that City shall either: (a) elect to joint representation by Developer's counsel; or (b) retain an experienced litigation attorney, require such attorney to prepare and comply with a litigation budget, and present such litigation budget to Developer prior to incurring obligations to pay legal fees in excess of Thirty Thousand Dollars ($30,000). If one or more Developers defends any such legal challenge, the Developer or Developers who opted to so defend shall indemnify, defend, and hold harmless City and its officials and employees from and against any Claims assessed or awarded against City by way of judgment, settlement, or stipulation. Nothing herein shall authorize any Developer to settle such legal challenge on terms that would constitute an amendment or modification of this Agreement, any Existing Approvals or any Subsequent Project Approvals, unless such amendment or modification is approved by City in accordance with applicable legal requirements, and City reserves its full legislative discretion with respect thereto. In addition, City shall have the right, but not the obligation, to contest or defend such litigation challenges, in the event that Developer elects not to do so. If City elects to contest or defend such litigation challenges, Developers, jointly and severally, shall bear all related costs and expenses, including City's attorney fees and costs, and, in addition, shall indemnify, defend, and hold harmless City and its officials and employees from and against any and all Claims assessed or awarded against City by way of judgment, settlement, or stipulation, without regard to the above dollar amount cap.

5.3.3. Indemnification. Each Developer shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City and City Parties from and against any and all claims, costs, liabilities and damages (collectively, "Claims"), including Claims for any bodily injury, death, or property damage, arising or resulting directly or indirectly from the approval or implementation of this Agreement, the development or construction of the Project or any portion thereof by or on behalf of such Developer, and/or from any acts, omissions, negligence or willful misconduct of such Developer, whether such acts, omissions, negligence or willful misconduct are by Developer or any of Developer's contractors, subcontractors, agents or

employees. The foregoing indemnity shall not apply to any Claims arising or resulting from the sole active negligence or willful misconduct of City or City Parties.

5.4. Dispute Resolution. As an alternative procedure, in an action by the City against a Defaulting Developer or in an action by a Developer against the City hereunder, the Parties each in its own sole and absolute discretion may mutually agree that the action be heard by a referee pursuant to Code of Civil Procedure Section 638 *et seq*. If the Parties do so agree in their sole discretion, they shall use their best efforts to agree upon a single referee who shall then try all issues, whether of fact or law, and report a funding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before him. If Developers and City are unable to agree upon a referee within ten (10) days of a written request to do so by either Party, the Parties, each in its sole discretion, may mutually elect to have a referee appointed pursuant to section 640 of the Code of Civil Procedure. The cost of such proceeding (exclusive of the attorney's fees and cost of the Parties) shall be borne equally by the Parties. Any referee selected pursuant to this Section 5.4 shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution. In the event that an alternative method of resolving disputes concerning the application, enforcement or interpretation of a development agreement is provided by legislative or judicial action after the Effective Date, the Parties may, by mutual agreement, select such alternative method. Notwithstanding the foregoing, alternative dispute resolution, as described in this Section 5.4, is an optional remedy under this Agreement and where a Party asserting an action wishes to do so, that Party may bring a legal action as set forth in Section 5.3 [Legal Actions] without first engaging in alternative dispute resolution. Likewise, the Party against whom the action is asserted shall be under no obligation to have such action heard by a referee or to seek resolution of the action through any other alternative dispute resolution described above.

5.5. Termination of Agreement. This Agreement is terminable: (i) by mutual written consent of the Parties, or (ii) by any Party following an uncured default by another Party under this Agreement, subject to the procedures and limitations set forth in this Agreement, except that in the event of default by one Developer, this Agreement shall continue with respect to the other non-defaulting Developers in accordance with the terms hereof. Any obligations of indemnification and defense relating to matters arising before termination of this Agreement shall survive termination of this Agreement. Except as otherwise set forth in this Agreement, if this Agreement is terminated by mutual written consent of the Parties, no Party shall have any further rights or obligations under this Agreement. All Parties waive, with respect to termination of this Agreement by mutual written consent of the Parties, any claims for damages arising out of the termination of this Agreement. Nothing herein contained shall release or excuse Developers in the performance of their respective obligations to indemnify and defend the City as provided in this Agreement. Upon completion of performance of the Parties or termination of this Development Agreement, a written statement acknowledging such completion or termination shall be recorded by City in the Official Records of San Mateo County, California.

ARTICLE 6: ASSIGNMENTS

6.1. Subsequent Development Agreements. If requested by a Developer, City will enter into a separate Development Agreement with an individual Developer in a form acceptable to City that will specify the rights and obligations applicable to the requesting Developer, at such

Developer's sole cost. Such Development Agreement may be entered into at any time, including at such time as a Developer's Subsequent Project Approvals have been granted.

6.2. Complete Assignment. Each Developer shall provide the City with written notice of any proposed assignment of all or any portion of such Developer's rights or obligations hereunder (each, an "Assignment") at least ten (10) business days prior to such Assignment. Each such notice of proposed Assignment shall be accompanied by evidence of assignee's assumption of the assigning Developer's obligations hereunder in the form of Exhibit I [Form Assignment and Assumption Agreement], and upon the City's receipt of the fully executed assignment and assumption agreement, the assigning Developer's liability shall terminate as to the obligations assigned.

6.3. Partial Assignment to Purchasers. Each Developer may assign less than all of their rights and obligations under this Agreement to those entities that acquire less than the entirety of that portion of the Property owned by the assigning Developer. Each assigning Developer will be released from its obligations under this Agreement with respect to such Assignment, subject to the following: (i) the assigning Developers shall have given the City at least ten (10) business days prior written notice of the Assignment, which shall include the name and address for notice purposes; (ii) the assignee, pursuant to an assignment and assumption agreement substantially in the form of Exhibit I [Form Assignment and Assumption Agreement], shall have agreed in writing to be subject to all of the applicable provisions of this Agreement and such assignment agreement shall provide for the allocation of responsibilities and obligations between the assigning Developer and the assignee, and (iii) such assignment agreement shall be recorded in the official records of San Mateo County on that portion of the Property owner by such assignee. Additionally, subject to requirements regarding prior notice to City and the form of written assignment assumption provided in this Section 6.3, one Developer may freely assign its rights and duties under this Agreement to another Developer who acquires the Property of the assigning Developer.

6.4. Assignment to Master Property Owners' Association. The City and Developers agree that the Developers' on-going ownership, operation and maintenance obligations with respect to private streets and common areas, Park Plaza Site park improvements and other onsite public improvements described in this Agreement may be assigned to one or more Master Property Owners' Association(s) to be established by the Developers; provided, however, that such on-going obligations shall be documented in recorded conditions covenants and restrictions in a form reasonably acceptable to the City and approved by City through the applicable Specific Development Plan/Use Permit and further provided that such assignment to a Master Property Owner's Association shall be accompanied by evidence that such assignee has the financial ability to assume and commitment to perform the Developer's obligations hereunder.

6.5. Assignment to Financial Institutions. Notwithstanding any other provisions of this Agreement, each Developer may assign all or any part of its rights and duties under this Agreement to any financial institution from which any Developer has borrowed funds for use in constructing the improvements contemplated in this Agreement or otherwise developing the Property. The assigning Developer shall provide a complete copy of any such financing assignment to City within ten (10) business days following execution thereof. A conditional

assignment or other transfer by financial institution back to a Developer as part of any financing transaction shall not require the City's consent.

6.6. Assumption of Assigned Obligations; Release of Assignor. Subject to the provisions and conditions of this Section 6.6, upon the Assignment of any or all of the rights, duties, obligations or interests under this Agreement or other of the Project Approvals and receipt by City of the fully executed assignment and assumption agreement as provided for herein, the assignor (e.g., Developer) shall be released from those obligations under this Agreement and the Project Approvals that are specified in the assumption agreement as having been assigned to and assumed by the assignee.

Upon providing such assignment and assumption agreement to the City, (y) any default by an assignee of any rights, duties, obligations or interests so assigned and assumed by the assignee shall not thereby constitute a default or breach by the assignor with respect to the rights, duties, obligations or interests not assigned and (z) any default by the assignor of any rights, duties, obligations or interests not so assigned shall not thereby constitute a default or breach by the assignee with respect to the rights, duties, obligations or interests so assigned and assumed. The parties to the assignment and assumption agreement shall address in detail whether and how each obligation and right set forth in this Agreement and in the other Project Approvals shall be divided, allocated, assigned or otherwise assigned, in whole or in part, among the assignor and assignee; if requested by an assignor and assignee, City agrees to assist the assignor and assignee (including attendance at meetings), at assignor's expense, in determining how each obligation and right set forth in this Agreement and the other Project Approvals can be described and allocated in the assignment and assumption agreement so as to avoid confusion later regarding what obligations and rights have and have not been assigned. The assignment and assumption shall be in the form attached as Exhibit I [Form Assignment and Assumption Agreement] and shall be recorded on the portion of the Property to which the assignment applies.

6.7. Successive Assignment. In the event there is more than one Assignment under the provisions of this Article 6, the provisions of this Article 6 shall apply to each successive Assignment and Assignee.

6.8. Excluded Transfers. Notwithstanding the foregoing, no sale of an individual dwelling unit or grant or dedication of related rights or easements shall require assignment of this Agreement ("Excluded Transfers"). As to such Excluded Transfers, this Agreement shall not run with the land, but shall be automatically terminated.

ARTICLE 7: GENERAL PROVISIONS

7.1. Compliance With Laws. Each Developer, at its sole cost and expense, shall comply with the requirements of, and obtain all permits and approvals required by local, State and Federal agencies having jurisdiction over the Project. Furthermore, each Developer shall carry out the Project work in conformity with all Applicable Law, including applicable state labor laws and standards; City zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the City of Foster City Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*,

Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

7.2. Mortgagee Protection.

7.2.1. Mortgagee Protected. 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 deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed or trust beneficiary or mortgagee ("Mortgagee"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Developers shall have the right, at any time and from time to time, to grant one or more Mortgages encumbering all or a portion of Developers' interest in the Property or portion thereof as security for one or more loans. Developers shall provide the City with a copy of the deed of trust or mortgage within ten (10) days after its recording in the official records of San Mateo County; provided, however, that the Developers failure to provide such document shall not affect any Mortgage, including without limitation, the validity, priority or enforceability of such Mortgage.

7.2.2. Mortgagee Not Obligated. Notwithstanding the provisions of Section 7.2.1 above, no Mortgagee (including one who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, eviction or otherwise) shall have any obligation to construct or complete construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with this Agreement and the other Project Approvals nor to construct any improvements thereon or institute any uses other than those uses or improvements provided for or authorized by this Agreement, or otherwise under the Project Approvals. Except as otherwise provided in this Section 7.2.2 [Mortgagee Not Obligated], all of the terms and conditions contained in this Agreement and the other Project Approvals shall be binding upon and effective against and shall run to the benefit of any person or entity, including any Mortgagee, who acquires title or possession to the Property, or any portion thereof.

7.2.3. Notice of Default to Mortgagee. If City receives a notice from a Mortgagee requesting a copy of any Notice of Default given Developers hereunder and specifying the address for service thereof, then City agrees to use its diligent, good faith efforts to deliver to such Mortgagee, concurrently with service thereon to Developers, any Notice of Default given to Developers. Each Mortgagee shall have the right during the same period available to Developers to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City's Notice of Default. If a Mortgagee is required to obtain possession in order to cure any default, the time to cure shall be tolled so long as the Mortgagee is attempting to obtain possession, including by appointment of a receiver or foreclosure but in no event may this period exceed one hundred twenty (120) days from the City's Notice of Default.

7.2.4. No Supersedure. Nothing in this Section 7.2 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Section 7.2 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 7.2.3.

7.3. Amendments to Agreement. The Parties agree that they will make reasonable amendments to this Agreement, at the expense of the requesting Developer, to meet the requirements of any lender or mortgagee for the Project. For the purposes of this Section a reasonable amendment is one that does not relieve the Developer of any of its material obligations under this Agreement or impair the ability of the City to enforce the terms of the Agreement.

7.4. Covenants Binding on Successors and Assigns and Run with Land. Except as otherwise more specifically provided in this Agreement, including but not limited to the exceptions described in Section 6.8, this Agreement and all of its provisions, agreements, 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 (by merger, consolidation or otherwise) and assigns, as provided in Government Code section 65868.5.

7.5. Notice. Any notice, demand or request which may be permitted, required or desired to be given in connection herewith shall be given in writing and directed to the City and Developers as follows:

If to the City:

Community Development Director
City of Foster City
610 Foster City Boulevard
Foster City, CA 94404
Attention: Richard Marks
Telephone: (650) 286-3225
Facsimile: (650) 286-3589

City Attorney
939 Laurel Street, Suite D
San Carlos, CA 94070
Attention: Jean Savaree
Telephone: (650) 593-3117
Facsimile: (650) 637-1401

If to Developers:

Saroush Kaboli
2042 Barbara Drive
Palo Alto, CA 94303
Telephone: (650) 325-7891

Alyn T. Beals
Beals Martin & Associates
2596 Bay Road, Suite A
Redwood City, CA 94063
Telephone: (650) 364-8141

Sares-Regis Group of Northern California
901 Mariner's Island Boulevard, 7th Floor
San Mateo, CA 94404
Attention: Mark Kroll, Zach Wilson, Andrew Hudacek
Telephone: (650) 378-2800
Facsimile: (650) 570-2233

AMB Institutional Alliance Fund III, LP
1360 Willow Road, Suite 100
Menlo Park, CA 94025
Attention: Mark Hanson
Telephone: (650) 330-9017
Facsimile: (650) 330-9001

With Copies to:

Holland & Knight LLP
50 California Street, Suite 2800
San Francisco, CA 94109
Attention: Tamsen Plume
Telephone: (415) 743-6900
Facsimile: (415) 743-6910

Law Office of Jeffrey A. Trant
P.O. Box 4026
Los Altos, CA 94023-4026
Attention: Jeff Trant
Telephone: (650) 963-9120
Facsimile: (650) 386-6091

Law Office of Kenneth H. Horowitz
951 Mariner's Island Boulevard, Suite 240
San Mateo, CA 94404
Attention: Kenneth Horowitz
Telephone: (650)378-7680
Facsimile: (650) 378-7681

Notices to be deemed effective if delivered by certified mail, return receipt requested, commercial courier or by facsimile, with delivery to be effective upon verification of receipt, except as to facsimile if confirmation is after 5:00 p.m., then deemed received the following business day. Any Party may change its respective address for notices by providing written notice of such change to the other Parties.

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

7.7. Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its or their 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 another 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 another 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.

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

7.9. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, or unenforceable, in whole or in part for any reason, the remaining terms and provisions of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement, would be defeated by loss of the invalid or unenforceable provisions, in which case any Party may terminate this Agreement by providing written notice thereof to the other Parties.

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

7.11. Extension of Time Limits. The time limits set forth in this Agreement may be extended by mutual consent in writing of the Parties in accordance with the provisions of this Agreement.

7.12. Signatures The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developers and the City.

7.13. Entire Agreement. This Agreement (including all exhibits attached hereto, each of which is fully incorporated herein by reference), integrates all of the terms and conditions mentioned herein or incidental hereto, and constitutes the entire understanding of the Parties with

respect to the subject matter hereof, and all prior or contemporaneous oral agreements, understandings, representations and statements, and all prior written agreements, understandings, representations, and statements are terminated and superseded by this Agreement.

7.14. Estoppel Certificate. Any Developer may, at any time, and from time to time, deliver written notice to the City requesting the City to certify in writing that: (i) the Agreement is in full force and effect, (ii) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, and (iii) the Developer requesting such certificate is not in default of the performance of its obligations, or if in default, to describe therein the nature and extent of any such defaults. The Community Development Director shall be authorized to execute any certificate requested by Developers hereunder. The form of estoppel certificate shall be in a form reasonably acceptable to City Attorney. The Community Development Director shall execute and return such certificate within thirty (30) days following Developer's request therefor. Developers and City acknowledge that a certificate hereunder may be relied upon by tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and "Mortgagees" (defined in Section 7.2.1.). The request shall clearly indicate that failure of the City to respond within the thirty (30) day period will lead to a second and final request. Failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the estoppel certificate.

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

7.16. Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that no Party to this Agreement is acting as the agent of any other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of the Developers, the affairs of the City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise.

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

Exhibit A-1	AMB Property Legal Description
Exhibit A-2	Map of AMB Property
Exhibit B-1	Foster City Executive Park Partners Property Legal Description
Exhibit B-2	Map of Foster City Executive Park Partners Property
Exhibit C-1	Northwestern Property Legal Description
Exhibit C-2	Map of Northwestern Property
Exhibit D	Applicable City Regulations

Exhibit E	Permitted Density and Intensity of Use
Exhibit F	Sustainable Design Standards
Exhibit G	Impact Fees
Exhibit H	Off-Site Traffic Improvements
Exhibit I	Form Assignment and Assumption Agreement
Exhibit J	Annual Review Form
Exhibit K	Form of Plaza Easement Agreement