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015-023-310

SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF SOUTH SAN FRANCISCO
AND
BMR-700 GATEWAY LP, BMR-750, 800, 850 GATEWAY LP,
BMR-900 GATEWAY LP, AND BMR-1000 GATEWAY LP

SOUTH SAN FRANCISCO, CALIFORNIA

Gateway Business Park Master Plan Project

SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT

Gateway Business Park Master Plan Project

This SECOND AMENDED AND RESTATED DEVELOPMENT AGREEMENT FOR THE GATEWAY BUSINESS PARK MASTER PLAN PROJECT is dated August ___, 2018 ("Agreement"). This Agreement is between BMR-700 Gateway LP ("BMR-700 Gateway); BMR-750, 800, 850 Gateway LP ("BMR-750, 800, 850 Gateway"); BMR-900 Gateway LP ("BMR-900 Gateway"); and BMR-1000 Gateway LP ("BMR-1000 Gateway"); all of which are Delaware limited partnerships (collectively "Owners" and individually "Owner"), on the one hand, and the CITY OF SOUTH SAN FRANCISCO, a municipal corporation organized and existing under the laws of the State of California ("City"), on the other hand. Each Owner and the City are individually referred to herein as a "Party" and collectively referred to herein as "Parties."

R E C I T A L S

A. WHEREAS, California Government Code ("Government Code") Sections 65864 through 65869.5 authorize the City to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property or on behalf of those persons having same; and

B. WHEREAS, pursuant to Government Code Section 65865, the City has adopted rules and regulations, embodied in Chapter 19.60 of the South San Francisco Municipal Code ("Municipal Code" or "SSFMC"), establishing procedures and requirements for adoption and execution of development agreements; and

C. WHEREAS, this Agreement concerns property consisting of a 22.6-acre site located at the corner of Gateway and Oyster Point Boulevards (700, 750, 800, 850, 900, and 1000 Gateway Boulevard), in the East of 101 Area Plan, the Gateway Redevelopment Project Area and the Gateway Specific Plan District, which the Parties intend to be developed in phases (Phase 1 through Phrase 4), all as shown and more particularly described in Exhibit A, attached (the "Property"); and

D. WHEREAS, each Owner now has a legal or equitable interest in a portion of the Property subject to this Agreement to the extent referenced and depicted in Exhibit A; and

E. WHEREAS, on February 24, 2010, the City Council adopted Ordinance Number 1423-2010, which approved and adopted that certain Development Agreement for the Gateway Business Park Master Plan Project ("Original Agreement") between the City and Chamberlin Properties I Limited Partnership, a California limited partnership, the then-owner of the Property; and

F. WHEREAS, the Original Agreement became effective on or about March 26, 2010 ("2010 Effective Date"); and

G. WHEREAS, on May 8, 2013 City adopted Resolution 44-2013 approving a Modified Master Plan for redevelopment of the Property ("Master Plan"), and a Precise Plan for redevelopment of Phase 1 of the Project ("Phase 1 Precise Plan"); and

H. WHEREAS, on May 22, 2013 City adopted Ordinance Number 1471-2013, which approved and adopted a First Amended And Restated Development Agreement for the Gateway Business Park Master Plan Project, which ordinance took effect 30 days later on June 21, 2013 (the "2013 Effective Date"); and

I. WHEREAS, pursuant to Ordinance Number 1471, effective August 20, 2013, the City and BMR-Gateway/Oyster LLC, a Delaware limited liability company ("BMR-Gateway/Oyster"), an affiliate that is under common control with Owners, entered into that certain First Amended And Restated Development Agreement for the Gateway Business Park Master Plan Project;

J. WHEREAS, by letter dated August 26, 2013, BMR-Gateway/Oyster gave notice to the City of the following transfers and assignments to Owners, all of which are affiliates under common control with BMR-Gateway/Oyster and the other Owners, pursuant to Sections 15(c), 15(e) and 15(f) of this Agreement:

BMR-Gateway/Oyster transferred its rights to develop the real property known as 700 Gateway Boulevard to BMR-700 Gateway, and retained all compliance burdens, obligations, and responsibilities for this real property;

BMR-Gateway/Oyster transferred its rights to develop the real property known as 750, 800 and 850 Gateway Boulevard, South San Francisco, to BMR-750, 800, 850 Gateway, and retained all compliance burdens, obligations, and responsibilities for this real property;

BMR-Gateway/Oyster transferred its rights to develop the real property known as 900 Gateway Boulevard, South San Francisco to BMR-900 Gateway, and retained all compliance burdens, obligations, and responsibilities for this real property;

BMR-Gateway/Oyster transferred its rights to develop the real property known as 1000 Gateway Boulevard, South San Francisco to BMR-1000 Gateway and retained all compliance burdens, obligations, and responsibilities for this real property.

K. WHEREAS, on February 3, 2017, there was recorded in the Official Records of the County of San Mateo as Document Number 2017-011238, a document entitled LOT LINE ADJUSTMENT NO. 2016-001 (the "2016 Lot Line Adjustment"), which documents City's approval of a lot line adjustment adjusting the boundary between Phases 1 and 2 of the Property (i.e. between the parcels owned by BMR-1000 Gateway and BMR-750, 800, 850 Gateway located at 1000 Gateway Boulevard and 750, 800 and 850 Gateway Boulevard);

L. WHEREAS, BMR-750, 800, 850 Gateway subsequently deeded to BMR-1000 Gateway, and BMR-1000 Gateway accepted from BMR-750, 800, 850 Gateway, a portion of the Property reflecting such 2016 Lot Line Adjustment, which resulted in the Property ownership reflected in Exhibit A;

M. WHEREAS, BMR-750, 800, 850 Gateway and BMR-900 Gateway intend in the future to seek additional lot line adjustment(s) and/or a parcel map to further adjust boundaries between their parcels within the Property as conceptually depicted in Exhibit F;

N. WHEREAS, Owners have requested that the City enter into this Agreement to amend and restate the rights and obligations of the Parties relating to the development of the Property, confirm that each Owner holds the compliance burdens, obligations, and responsibilities for its parcel of Property under this Agreement, and acknowledge the transfer and assignment related to the 2016 Lot Line Adjustment; and,

O. WHEREAS, all proceedings necessary for the valid adoption and execution of this Agreement have taken place in accordance with Government Code Sections 65864 through 65869.5, the California Environmental Quality Act ("CEQA"), and Chapter 19.60 of the Municipal Code; and

P. WHEREAS, the City Council and the Planning Commission have found that this Agreement is consistent with the objectives, policies, general land uses and programs specified in the South San Francisco General Plan as adopted on October 13, 1999 and as amended from time to time; and

Q. WHEREAS, on July 11, 2018, the City Council adopted Ordinance No. 1559-2018 approving and adopting this Agreement, and the Ordinance took effect thirty days later.

A G R E E M E N T

NOW, THEREFORE, the Parties, pursuant to the authority contained in Government Code Sections 65864 through 65869.5 and Chapter 19.60 of the Municipal Code and in consideration of the mutual covenants and agreements contained herein, agree as follows:

1. Effective Date

Pursuant to Section 19.60.140 of the Municipal Code, notwithstanding the fact that the City Council adopts an ordinance approving this Agreement, this Agreement shall be effective and shall only create obligations for the Parties from and after the date that the ordinance approving this Agreement takes effect ("2018 Effective Date").

2. Duration

This Agreement shall expire twelve (12) years from the 2013 Effective Date, but in no event later than December 31, 2025. Notwithstanding the foregoing, if litigation against an Owner (or any of its officers, agents, employees, contractors, representatives or consultants) to which the City also is a party should delay implementation or construction on such Owner's parcel of Property of the "Project" (as defined in Section 3 below), the

expiration date of this Agreement as applicable to that Owner's parcel and obligations of such Owner shall be extended for a period equal to the length of time from the time the summons and complaint is served on the defendant(s) until the judgment entered by the court is final, and not subject to appeal; provided, however, that the total amount of time for which the expiration date shall be extended as a result of such litigation shall not exceed five (5) years.

3. Project Description; Development Standards For Project

The project to be developed on the Property pursuant to this Agreement (the "Project") shall consist of the phased removal and replacement of existing buildings on the 22.6-acre project site and construction of five to six new buildings and two to four parking structures, in multiple phases from 2013 to 2025, and exterior landscaping and driveways, and other related improvements, to create a connected, pedestrian-friendly campus-style development, as more particularly described in the Master Plan and the Phase 1 Precise Plan (attached as Exhibit B and Exhibit C respectively) and as approved by the City Council.

(a) The permitted uses, the density and intensity of uses, the maximum heights, locations and total area of the proposed buildings, the development schedule, the provisions for vehicular access and parking, any reservation or dedication of land, any public improvements, facilities and services, and all environmental impact mitigation measures imposed as approval conditions for the Project shall be exclusively those provided in the Master Plan and Phase 1 Precise Plan, the Gateway Business Park Master Plan Project Environmental Impact Report dated January 2010, this Agreement, and the applicable ordinances in effect as of the 2013 Effective Date, except as modified in this Agreement. The Project will be redeveloped in multiple phases. Each new phase of development will adhere to the governing Municipal Code provisions applicable to the Property as of the 2013 Effective Date (except as modified by this Agreement), as well as the development guidelines set forth in the Gateway Master Plan Development Standards, including the implementation of access, service and parking needs to support each new phase of redevelopment. During each particular redevelopment phase, each Owner will maintain existing access, service and parking needs to support existing improvements located on portions of the Property, yet to be redeveloped during subsequent phases. Plan details for subsequent phases will be submitted to the City for appropriate review and approval, in the form of future Precise Plans.

(b) Subject to an Owner's fulfillment of its obligations under this Agreement, upon the 2018 Effective Date of this Agreement, the City hereby grants to such Owner a vested right to develop and construct on such Owner's parcel of the Property the improvements for the Project authorized by, and in accordance with, the terms of this Agreement, the Master Plan and Phase 1 Precise Plan (as approved by the City Council) and the applicable ordinances in effect as of the 2013 Effective Date.

(c) Upon such grant of right, no future amendments to the City General Plan, the City Zoning Code, the Municipal Code, or other City ordinances, policies or regulations in effect as of the 2013 Effective Date shall apply to the Project, except such future modifications that are not in conflict with and do not prevent the development proposed in the Master Plan and Phase 1 Precise Plan; provided, however, that nothing in this Agreement shall prevent or preclude the City from adopting any land use regulations or amendments expressly permitted herein or otherwise required by State or Federal Law.

(d) An Owner shall cause the Project on its parcel to be submitted for certification pursuant to the Leadership in Energy and Environmental Design ("LEED") Green Building Rating System of the U.S. Green Building Council or other industry equivalent agency. Such Owner shall use good faith efforts to achieve a "Silver" rating, pursuant to the LEED Green Building Rating System. Provided, however, that no Owner shall be in default under this Agreement if, notwithstanding Owner's good faith efforts, the Project does not receive a "Silver" (or higher) rating.

4. Permits for Project

An Owner shall submit a Precise Plan for any future phase of development of the Project on its parcel, consistent with Chapter 20.220 of the South San Francisco Municipal Code, as of the 2013 Effective Date. The future Precise Plan(s) shall address, at a minimum, the building architecture, landscaping, and common improvements required for the applicable phase of the Project. Evaluation of future Precise Plans shall be reviewed for consistency with the Master Plan, and this Agreement as approved by the City Council and vested by this Agreement as of the 2018 Effective Date, and applicable development standards described in Section 3 above in effect as of the 2013 Effective Date. Notwithstanding the foregoing, future Precise Plans shall comply with all applicable Uniform Codes, the Municipal Code in effect as of the 2013 Effective Date, CEQA requirements (including any required mitigation measures) and Federal and State Laws.

5. Vesting of Approvals

Upon the City's approval of the Master Plan, the Phase 1 Precise Plan, this Agreement, and future phase Precise Plans, each such approval shall be vested in each Owner and its successors and assigns for the term of this Agreement with respect to such Owner's parcel of Property, provided that the successors and assigns comply with the terms and conditions of all of the foregoing, including, but not limited to, submission of insurance certificates and bonds for the grading of the Property and construction of improvements.

6. Cooperation Between Parties in Implementation of this Agreement

It is the Parties' express intent to cooperate with one another and diligently work to implement all land use and building approvals for development of the Property in accordance with the terms of this Agreement. Accordingly, Owners and the City shall proceed in a reasonable and timely manner, in compliance with the deadlines mandated

by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Property in accordance with the terms of this Agreement. The City shall proceed in an expeditious manner to complete all actions required for the development of the Project, including, but not limited to, the following:

(a) Scheduling all required public hearings by the City Council and City Planning Commission; and

(b) Processing and checking all maps, plans, permits, building plans and specifications and other plans relating to development of the Property filed by any Owner or its nominee, successor or assign as necessary for development of the Property, and inspecting and providing acceptance of or comments on work by Owners that requires acceptance or approval by the City.

Owners, in a timely manner, shall provide the City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and to cause its planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents.

7. Acquisition of Other Property; Eminent Domain

In order to facilitate and insure development of the Project in accordance with the Master Plan and the City Council's approval, the City may assist an Owner, at such Owner's request and at such Owner's sole cost and expense, in acquiring any easements or properties necessary for the satisfaction and completion of any off-site components of the Project required by the City Council to be constructed or obtained by an Owner in the Council's approval of the Project and the Master Plan and Phase 1 Precise Plan, in the event an Owner is unable to acquire such easements or properties or are unable to secure the necessary agreements with the applicable property owners for such easements or properties. Owners expressly acknowledge that the City is under no obligation to use its power of Eminent Domain.

8. Maintenance Obligations on Property

All of the Property subject to this Agreement shall be maintained by Owners or their successors in perpetuity in accordance with City requirements to prevent accumulation of litter and trash, to keep weeds abated, to provide erosion control, and to comply with other requirements set forth in the Municipal Code, subject to City approval as permitted or required by the Municipal Code.

(a) If Owners further subdivide the property or otherwise transfer ownership of a parcel or building in the Project to any person or entity that is not an affiliate under common control with the other Owners, such that the Owners, or Owners' member, partner, parent, or subsidiary, no longer owns a majority interest in a parcel or building in the Project, Owners shall first establish an Owners' Association and submit Conditions, Covenants and Restrictions ("CC&Rs") to the City for review and approval by the City Attorney not to be unreasonably

withheld, conditioned or delayed (provided, however, that if such transfer arises from a Mortgage Transfer Event (as defined in Section 31 below), then such Association shall be established and CC&Rs shall be submitted as soon as reasonably practicable after such Mortgage Transfer Event). Said CC&Rs shall satisfy the requirements of Section 19.36.040 of the Municipal Code.

(b) Any provisions of said CC&Rs governing the Project relating to the maintenance obligations under this Section shall be enforceable by the City.

9. Reserved

10. New Taxes

Any subsequently enacted City-wide taxes shall apply to the Property, provided that: (i) the application of such taxes to the Property is prospective; and (ii) the application of such taxes would not prevent development in accordance with this Agreement.

11. Assessments

Nothing herein shall be construed to relieve the Property from common benefit assessments levied against it and similarly situated properties by the City pursuant to and in accordance with any statutory procedure for the assessment of property to pay for infrastructure and/or services that benefit the Property.

12. Additional Conditions

Owners shall comply with all of the following requirements:

(a) **Fees.** Owners shall not be responsible for any fees imposed by the City in connection with the development and construction of their parcels within the Project, except as outlined in this Agreement and those fees in existence as of the 2013 Effective Date, all of which are identified in Exhibit E hereto. No fee requirements (other than those identified herein) imposed by the City on or after the 2013 Effective Date and no changes to existing fee requirements (except those currently subject to periodic adjustments as specified in the adopting or implementing resolutions and ordinances) that occurred on or after the 2013 Effective Date, shall apply to the Project. Any application, processing, administrative, legal and inspection fees that are revised during the term of this Agreement shall apply to the Project provided that (i) such fees have general applicability; (ii) the application of such fees to the Property is prospective; and (iii) the application of such fees would not prevent development in accordance with this Agreement.

1) **Impact Fees**. An Owner shall pay the East of 101 Traffic Impact fee, the Oyster Point Interchange fee, the Sewer Impact fee, and the Childcare fee, to the extent applicable to the phase of the Project to be developed by such Owner, based on the application of the formulas in effect as of the time the City issues each building permit for each phase of the Project, and shall be

payable substantially concurrently with, but not later than, the issuance of each such building permit. All such impact fees shall be based on net new square footage proposed to be developed by such Owner.

2) **Park In-Lieu Fee**. The City is evaluating a "Park In-Lieu Fee" to support the creation of additional public open space in lieu of requiring that applicants avail one-half an acre per 1,000 new employees, to the public in the East of 101 area. An Owner shall pay a Park In-Lieu Fee of $4.78 per square foot of development, excluding parking structures, by such Owner. The fee payable may be reduced if the City adopts such a Park In-Lieu Fee applicable to developments in the East of 101 area similar to the Gateway Business Park Master Plan Project and the amount owed per square foot under that Park In-Lieu Fee is less than $4.78 per square foot in which case Owners shall pay the amount set forth in the Park In-Lieu Fee applicable to developments in the East of 101 area, rather than the $4.78 per square foot fee. An Owner shall receive a credit to offset a portion of the Park In-Lieu Fee, for development of private open space created in such Owner's relevant phase within the Gateway Master Plan. An Owner's credit shall be identical to the credit, if any, allowed under the Park In-Lieu Fee program, if implemented, except that (i) in no case, shall an Owner receive a credit offsetting less than 25% of such Owner's required fee, or more than 50% of such Owner's required fee; and (ii) in no case shall zoning or building code required open areas, including but not limited to the ten-percent landscaping requirement (SSFMC, § 20.300.007(F)(1)(a)) and setbacks, be counted towards any offsetting credit. An Owner shall pay the Park In-Lieu Fee once per phase, upon issuance of the first tenant improvement permit for each phase to be developed by such Owner, based upon the total square footage approved for development for that phase.

(b) **Child Care Replacement Facility.**

1) So long as the existing childcare facility located at 850 Gateway Boulevard remains in place, and retains its status as a fully licensed and operational childcare facility serving at least 100 children, no additional childcare requirement (other than the City's Childcare Fee described in Section 12(a)(1) above) will be imposed. However, if the 850 Gateway Boulevard childcare facility is closed, then no later than the date 750,000 square feet of gross floor area within the Project is occupied by tenants, the Owners of Phases 2, 3 and 4 shall either (a) cause the 850 Gateway Boulevard facility to be reopened and fully licensed and operational as needed to serve at least 100 children; or (b) have ready for occupancy a childcare facility of approximately 8,000 square feet designed to accommodate a minimum of 100 children within the Project or within one mile of the Project. If the childcare facility is open to the public, City and the Owner responsible for construction of the childcare facility may mutually agree to allow the City to operate the facility.

2) Notwithstanding the foregoing, if circumstances prevail that new construction does not exceed 650,000 square feet and the existing childcare facility at 850 Gateway Boulevard is eliminated, in each case as of December 31, 2022, then the Owners of Phases 2, 3 and 4 may alternatively meet this requirement by providing a one dollar ($1) per square foot childcare in-lieu fee for the Net New Construction (defined below) that has occurred as of December 31, 2022. "Net New Construction" means the total square footage of any permitted building constructed to implement the Project, reduced by the square footage of any permitted building that existed on the 2013 Effective Date and has been demolished to implement the Project. Each year after 2013, the one dollar ($1) per square foot fee shall automatically be increased at a rate equal to the Change from Prior Year for the Consumer Price Index—All Urban Consumers, for the San Francisco-Oakland-San Jose Area. If Owner elects to satisfy this childcare requirement through payment of this in-lieu fee, the in-lieu fee shall be paid no later than December 31, 2022. If building permits are issued for additional Net New Construction between December 31, 2022 and December 31, 2025, such Net New Construction will be subject to a childcare in-lieu fee no greater than the childcare in-lieu fee set forth in this Section 12(b)(2).

3) If, as of January 31, 2023, the 850 Gateway Boulevard childcare facility is eliminated or not fully licensed and operational as described above, and the Owners of Phases 2, 3 and 4 have failed to either construct a new childcare facility in accordance with the provisions of Section 12(b)(1), or Owners have failed to pay the in-lieu fee in accordance with the provisions of Section 12(b)(2), then Owners shall instead pay a fee equal to the City's estimated reasonable costs, including all costs associated with site acquisition (including, if necessary, eminent domain), environmental review, permitting, and all other expenses and fees, including reasonable attorneys' fees, required to construct a childcare facility of equivalent size and quality as that described in Section 12(b)(1).

4) Compliance with this Section 12(b) shall be deemed to be compliance with condition of approval A-16.b.

(c) **Transportation Demand Management Plan**. Owners of any phase(s) of the Project containing any redeveloped building (other than parking facilities) for which a certificate of occupancy has been issued shall prepare an annual Transportation Demand Management (TDM) report, and submit same to City, to document the effectiveness of the TDM plan in achieving the goal of 35% alternative mode usage by employees within the Project when the Project is built out to a 1.0 FAR or less, or a graduated scale between 35% and 40% alternative mode usage ("Targeted Alternative Mode Usage") when the Project is built out between a 1.0 and 1.25 FAR. The Targeted Alternative Mode Usage will be determined as follows:

FAR	Alternative Mode Usage
<1.0	35%
1.01 — 1.12	38%
1.13 — 1.25	40%

The TDM report will be prepared by an independent consultant, retained by City with the approval of the applicable Owners (which approval shall not be unreasonably withheld or delayed) and paid for by such Owners, which consultant will work in concert with Owners' TDM coordinator. The TDM report will include a determination of historical employee commute methods, which information shall be obtained by survey of all employees working in the redeveloped buildings on the Property. All non-responses to the employee commute survey will be counted as a drive alone trip. TDM monitoring shall be required and conducted pursuant to South San Francisco Municipal Code, Chapter 20.400, as that Chapter may be revised, amended, or reorganized from time to time.

1) TDM Reports: The initial TDM report for each redeveloped building on the Property will be submitted two (2) years after the granting of a certificate of occupancy with respect to the building, and this requirement will apply to all of the redeveloped buildings on the Property except the parking facilities. The second and all later reports with respect to each building shall be included in an annual comprehensive TDM report submitted to City covering all of the redeveloped buildings on the Property which are submitting their second or later TDM reports.

2) Report Requirements: The goal of the TDM program is to encourage alternative mode usage, as defined in Chapter 20.400 of the South San Francisco Municipal Code. The initial TDM report shall either: (1) state that the applicable property has achieved the Targeted Alternative Mode Usage, based on the number of employees in the redeveloped buildings at the time, providing supporting statistics and analysis to establish attainment of the goal; or (2) state that the applicable property has not achieved the Targeted Alternative Mode Usage, providing an explanation of how and why the goal has not been reached, and a description of additional measures that will be adopted in the coming year to attain the Targeted Alternative Mode Usage.

3) Penalty for Non-Compliance: If after the initial TDM report, subsequent annual reports indicate that, in spite of the changes in the TDM plan, the Targeted Alternative Mode Usage is still not being achieved, or if Owners that were obligated to submit a TDM report fail to submit such a TDM report at the times described above, City may assess such Owners a penalty in the amount of Fifteen Thousand Dollars ($15,000.00) per year for each percentage point that the actual alternative mode usage is below the Targeted Alternative Mode Usage goal.

i. In determining whether a financial penalty is appropriate, City may consider whether Owners have made a good faith effort to meet the TDM goals.

ii. If City determines that Owners have made a good faith effort to meet the TDM goals but a penalty is still imposed, and such penalty is imposed within the first three (3) years of the TDM plan (commencing with the first year in which a penalty could be imposed), such penalty sums, in the City's sole discretion, may be used by Owners toward the implementation of the TDM plan instead of being paid to City. If the penalty is used to implement the TDM Plan, an Implementation Plan shall be reviewed and approved by the City prior to expending any penalty funds.

iii. Notwithstanding the foregoing, the amount of any penalty shall bear the same relationship to the maximum penalty as the completed construction to which the penalty applies bears to the maximum amount of square feet of Office, Commercial, Retail and Research and Development use permitted to be constructed within each phase of the Project. For example, if there is 200,000 square feet of completed construction on the Property included within the TDM report with respect to which the penalty is imposed, the penalty would be determined by multiplying Fifteen Thousand Dollars ($15,000.00) times a fraction, the numerator of which is 200,000 square feet and the denominator of which is the maximum amount of square feet of building construction, excluding parking facilities, permitted on that phase of the Project; this amount would then be multiplied by the number of percentage points that the actual alternative mode usage is below the Targeted Alternative Mode Usage goal.

iv. The provisions of this Section are incorporated as Conditions of Approval for the Project and shall be included in the approved TDM for the Project.

(d) **Transit Station or Ferry Terminal Enhancement Contribution**. Owners shall pay an in-lieu fee to be used for enhancing, enlarging, repairing, restoring, renovating, remodeling, redecorating, maintaining, and/or refurbishing the Caltrain Station located at 590 Dubuque Avenue, the Oyster Point Ferry terminal and/or their associated facilities. The in-lieu fee for each Owner shall be in the amount of one dollar per square foot of building area excluding parking structures for each phase of development on such Owner's parcel and shall be payable in two (2) equal installments per phase. One-half (1/2) of the in-lieu fee shall be payable substantially concurrently with, but not later than, the issuance of the building permit for the shell of the building, and one-half (1/2) of the in-lieu fee shall be payable prior to the issuance of a Certificate of Occupancy for the shell of the building.

(e) **Public Safety Impact Fee**. As provided in Exhibit E, Owners shall pay the Public Safety Impact Fee, as set forth in Resolution No. 97-2012, adopted on December 10, 2012.

(f) **EIR**. The Parties will adhere to the Conditions of Approval for the Project and the Mitigations which result from the Gateway Business Park Master Plan Project Environmental Impact Report and Mitigation Monitoring and Reporting Program. Entitlement review for future Project phases will be limited in scope, so long as consistent with the EIR and Master Plan book and Design Guidelines.

13. Indemnity

Each Owner agrees to indemnify, defend (with counsel selected by the City subject to the reasonable approval of such Owner) and hold harmless the City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liability for any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by such Owner, or any actions or inactions of such Owner's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Project, provided that Owners shall have no indemnification obligation with respect to gross negligence or willful misconduct of the City, its contractors, subcontractors, agents or employees or with respect to the maintenance, use or condition of any public improvement after the time it has been dedicated to and accepted by the City or another public entity (except as provided in an improvement agreement or maintenance bond).

14. Interests of Other Owners

Owners have no knowledge of any reason why Owners, and each of them, and any other persons holding legal or equitable interests in the Property as of the 2018 Effective Date, will not be bound by this Agreement.

15. Assignment

(a) Right to Assign. An Owner may at any time or from time to time transfer its right, title or interest in or to all or any portion of its parcel of Property. In accordance with Government Code Section 65868.5, the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to such Owner. As a condition precedent to any such transfer, an Owner shall require the transferee to acknowledge in writing that transferee has been informed, understands and agrees that the burdens and benefits under this Agreement relating to such transferred property shall be binding upon and inure to the benefit of the transferee.

(b) Notice of Assignment or Transfer. No transfer, sale or assignment of an Owner's rights, interests and obligations under this Agreement shall occur without prior written notice to the City and approval by the City Manager, which approval shall not be unreasonably withheld, conditioned or delayed. The City Manager shall

consider and decide the matter within ten (10) days after an Owner's notice, provided all necessary documents, certifications and other information evidencing the ability of the transferee's ability to perform under this Agreement, are provided to the City Manager.

(c) Exception for Notice. Notwithstanding Section 15(b), an Owner may at any time, upon notice to the City but without the necessity of any approval by the City, transfer its parcel of Property or any part thereof and all or any part of such Owner's rights, interests and obligations under this Agreement to: (i) any subsidiary, affiliate, parent or other entity which controls, is controlled by or is under common control with such Owner, (ii) any member or partner of such Owner or any subsidiary, parent or affiliate of any such member or partner, (iii) any successor or successors to such Owner by merger, consolidation, non-bankruptcy reorganization or government action, or (iv) as a result of a Mortgage Transfer Event. As used in this Subsection, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies, whether through the ownership of voting securities, partnership interest, contracts (other than those that transfer an Owner's interest in the property to a third party not specifically identified in this Subsection) or otherwise.

(d) Release Upon Transfer. Upon the transfer, sale, or assignment of all of an Owner's rights, interests and obligations under this Agreement pursuant to Section 15(a), Section 15(b) or Section 15(c) of this Agreement, such Owner shall be released from the obligations under this Agreement, with respect to the parcel of Property, or portion thereof, transferred, sold, or assigned, arising subsequent to the date of the City Manager's approval of such transfer, sale, or assignment or the effective date of such transfer, sale or assignment, whichever occurs later; provided, however, that if any transferee, purchaser or assignee approved by the City Manager expressly assumes any right, interest or obligation of such Owner under this Agreement, such Owner shall be released with respect to such rights, interests and assumed obligations. In any event, the transferee, purchaser or assignee shall be subject to all the provisions hereof and shall provide all necessary documents, certifications and other necessary information prior to City Manager approval, where such approval is required as set forth in Section 15(b), above.

(e) Owners' Right to Retain Specified Rights or Obligations. Notwithstanding Section 15(a) and Section 15(c), an Owner may withhold from a sale, transfer or assignment of this Agreement certain rights, interests and/or obligations which such Owner shall retain, provided that such Owner specifies such rights, interests and/or obligations in a written document to be appended to or maintained with this Agreement and recorded with the San Mateo County Recorder prior to or concurrently with the sale, transfer or assignment. An Owner's purchaser, transferee or assignee shall then have no interest in or obligations for such retained rights, interests and obligations and this Agreement shall remain

applicable to such Owner with respect to such retained rights, interests and/or obligations.

(f) Time for Notice. Within ten (10) days of the date escrow closes on any such transfer, the applicable Owner shall notify the City in writing of the name and address of the transferee. Said notice shall include a statement as to the obligations, including any mitigation measures, fees, improvements or other conditions of approval, assumed by the transferee. Any transfer which does not comply with the notice requirements of this Section and Section 15(b) shall not release an Owner from its obligations to the City under this Agreement until such time as the City is provided notice in accordance with Section 15(b).

16. Insurance

(a) Commercial General Liability Insurance. At all times that an Owner is constructing any portion or phase of the Project, or any improvement related to any portion or phase of the Project, such Owner shall maintain in effect a policy of commercial general liability insurance with a per-occurrence combined single limit of not less than ten million dollars ($10,000,000.00). With the exception of workers' compensation and employer's liability, this insurance shall include City as an additional insured to the extent liability is caused by work or operations performed by or on behalf of such Owner.

(b) Workers Compensation Insurance. At all times that an Owner is constructing any portion or phase of the Project, or any improvement related to any portion or phase of the Project, such Owner shall maintain Worker's Compensation insurance for all persons employed by such Owner for work at the Project site. Such Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation insurance for its respective employees. Such Owner agrees to indemnify the City for any damage resulting from such Owner's failure to maintain any such required insurance.

(c) Evidence of Insurance. Prior to commencement of any construction of any portion or phase of the Project, or any improvement related to any portion or phase of the Project, the applicable Owner shall furnish the City satisfactory evidence of the insurance required in Subsections (a) and (b).

1) In the event of a reduction (below the limits required in this Agreement) or cancellation in coverage, or an adverse material change in insurance coverage and limits required in this Agreement, Owners shall, prior to such reduction, cancellation or change, provide at least ten (10) days' prior written notice to the City, regardless of any notification by the applicable insurer. If the City discovers that the policies have been cancelled or reduced below the limits required in this Agreement and no notice has been provided by either insurer or Owners, said failure shall constitute a material breach of this Agreement.

2) In the event of a reduction (below the limits required by this Agreement) or cancellation in coverage, Owners shall have five (5) days in which to provide evidence of the required coverage during which time no persons shall enter the Property to construct improvements thereon, including construction activities related to the landscaping and common improvements. Additionally, no persons not employed by existing tenants shall enter the Property to perform such work until such time as the City receives evidence of substitute coverage.

3) If Owners fail to obtain substitute coverage within ten (10) days, the City may obtain, but is not required to obtain, substitute coverage and charge Owners the cost of such coverage plus an administrative fee equal to ten percent (10%) of the premium for said coverage.

(d) The insurance shall include the City, its elective and appointive boards, commissions, officers, agents, employees and representatives as additional insureds on the policies.

17. Covenants Run With the Land

The terms of this Agreement are legislative in nature, and apply to the Property as regulatory ordinances. During the term of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall run with the land and shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring the Property, any lot, parcel or any portion thereof, and any interest therein, whether by sale, operation of law or other manner, and they shall inure to the benefit of the Parties and their respective successors.

18. Conflict With State or Federal Law

In the event that State or Federal laws or regulations, enacted after the 2013 Effective Date, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified (in accordance with Section 19 set forth below) or suspended as may be necessary to comply with such State or Federal laws or regulations. Notwithstanding the foregoing, an Owner shall have the right to challenge, at their sole cost, in a court of competent jurisdiction, the law or regulation preventing compliance with the terms of this Agreement and, if the challenge in a court of competent jurisdiction is successful, this Agreement shall remain unmodified and in full force and effect.

19. Procedure for Modification Because of Conflict With State or Federal Laws

In the event that State or Federal laws or regulations enacted after the 2013 Effective Date prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, the Parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with

such State or Federal law or regulation. Any such amendment or suspension of the Agreement shall be approved by the City Council in accordance with Chapter 19.60 of the Municipal Code as it was in effect on the 2013 Effective Date.

20. Periodic Review

(a) During the term of this Agreement, the City shall conduct "annual" and/or "special" reviews of Owners' good faith compliance with the terms and conditions of this Agreement in accordance with the procedures set forth in Chapter 19.60 of the Municipal Code. The City may recover reasonable costs incurred in conducting said review, including staff time expended and reasonable attorneys' fees.

(b) At least five (5) calendar days' prior to any hearing on any annual or special review, the City shall mail Owners a copy of all staff reports and, to the extent practical, related exhibits. Owners shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before the City Council or, if the matter is referred to the Planning Commission, then before said Commission. Following completion of any annual or special review, the City shall give Owners a written Notice of Action, which Notice shall include a determination, based upon information known or made known to the City Council or the City's Planning Director as of the date of such review, whether any Owner is in default under this Agreement and, if so, the alleged nature of the default, a reasonable period to cure such default, and suggested or potential actions that the City may take if such default is not cured by such Owners.

21. Amendment or Cancellation of Agreement

This Agreement may be further amended or terminated only in writing and in the manner set forth in Government Code Sections 65865.1, 65867.5, 65868, 65868.5 and Chapter 19.60 of the Municipal Code.

22. Agreement is Entire Agreement

This Agreement and all exhibits attached hereto or incorporated herein contain the sole and entire agreement between the Parties concerning Owners' entitlements to develop the Property. Each Party acknowledges and agrees that it has not made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery hereof, except representations expressly set forth herein, and each Party acknowledges that it has relied on its own judgment in entering this Agreement. Each Party further acknowledges that all statements or representations that heretofore may have been made by it to the other Parties are void and of no effect, and that it has not relied on statements or representations of the other Parties in its dealings with the other, except to the extent that such representation area expressly set forth herein.

23. Events of Default

Failure by a Party to perform any material term or provision of this Agreement applicable to such Party shall constitute a default of such Party. An Owner shall also specifically be in default under this Agreement upon the happening of one or more of the following events with respect to such Owner:

(a) If a warranty, representation or statement made or furnished by such Owner to the City is false or proves to have been false in any material respect when it was made; or,

(b) A finding and determination by the City made following an annual or special review under the procedure provided for in Government Code Section 65865.1 and Chapter 19.60 of the Municipal Code that, upon the basis of substantial evidence, such Owner has not complied in good faith with the terms and conditions of this Agreement applicable to such Owner; or,

(c) Such Owner fails to fulfill any of its obligations set forth in this Agreement and such failure continues beyond any applicable cure period provided in this Agreement. This provision shall not be interpreted to create a cure period for any event of default where such cure period is not specifically provided for in this Agreement.

24. Procedure Upon Default

(a) Upon the occurrence of an event of default by City or an Owner, either such Party may terminate or modify this Agreement with respect to the applicable Owner's parcel of Property in accordance with the provisions of Government Code Section 65865.1 and of Chapter 19.60 of the Municipal Code, provided Section 24(e) has been complied with.

(b) The City shall not be deemed to have waived any claim of defect in any Owner's performance if, on annual or special review, the City does not propose to terminate this Agreement.

(c) No waiver or failure by the City or any Owner to enforce any provision of this Agreement shall be deemed to be a waiver of any provision of this Agreement or of any subsequent breach of the same or any other provision.

(d) Any actions for breach of this Agreement shall be decided in accordance with California law. The remedy for breach of this Agreement shall be limited to specific performance and attorneys' fees as provided in Section 25 (a).

(e) The non-defaulting Party shall give the defaulting Party written notice of any default under this Agreement, and the defaulting Party shall have thirty (30) days after the date of the notice to cure the default or to reasonably commence the procedures or actions needed to cure the default; provided, however, that if such default is not capable of being cured within such thirty (30) day period, the

defaulting Party shall have such additional time to cure as is reasonably necessary.

25. Attorneys' Fees and Costs

(a) Action by Party. If legal action by a Party is brought against another Party because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party is entitled to reasonable attorneys' fees and court costs from the non-prevailing Party.

(b) Action by Third Party. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project approvals, the Parties shall cooperate in defending such action. Each Owner shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse the City for all reasonable court costs and attorneys' fees expended by the City in defense of any such action or other proceeding or payable to any prevailing plaintiff/petitioner.

26. Severability

If any material term or condition of this Agreement is for any reason held by a final judgment of a court of competent jurisdiction to be invalid with respect to any parcel of Property, and if the same constitutes a material change in the consideration for this Agreement, then the City or the Owner of any such parcel of Property may elect in writing to invalidate this entire Agreement with respect to such parcel of Property, and thereafter this entire Agreement shall be deemed null and void and of no further force or effect with respect to such parcel of Property following such election.

27. No Third Parties Benefited

No person other than the City, Owners, or their respective successors is intended to or shall have any right or claim under this Agreement, this Agreement being for the sole benefit and protection of the Parties and their respective successors. Similarly, no amendment or waiver of any provision of this Agreement shall require the consent or acknowledgment of any person not a Party or successor to this Agreement.

28. Binding Effect of Agreement

The provisions of this Agreement shall bind and inure to the benefit of the Parties originally named herein and their respective successors and assigns.

29. Relationship of Parties

It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the City and Owners and that Owners are not agents of the City. The Parties do not intend to create a partnership, joint venture or any other joint business relationship by this Agreement. The City and Owners hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained

herein or in any document executed in connection herewith shall be construed as making the City and Owners joint venturers or partners. Neither Owners nor any of Owners' agents or contractors are or shall be considered to be agents of the City in connection with the performance of Owners' obligations under this Agreement.

30. Bankruptcy

The obligations of this Agreement shall not be dischargeable in bankruptcy.

31. Mortgagee Protection: Certain Rights of Cure

(a) Mortgagee Protection. Any Owner may encumber its interest in its parcel of Property to secure a loan made to such Owner and collaterally assign its rights under this Agreement in connection with such loan without the consent of any of the other Owners or the City, subject to the terms and conditions of this Section 31. This Agreement shall be superior and senior to all liens placed upon the Property or any portion thereof after the date on which this Agreement or a memorandum of this Agreement is recorded with the San Mateo County Recorder, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, invalidate, 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 all persons and entities, including all deed of trust beneficiaries or mortgagees or other purchasers ("Mortgagees"), who acquire title to the Property or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise as a result of a default under a Mortgage (a "Mortgage Transfer Event"). Any Owner shall deliver written notice to the other Owners and the City within fourteen (14) days after recording any Mortgage against its parcel of Property, including the address for notices to the Mortgagee.

(b) Mortgagee Not Obligated. No Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of any improvements required by this Agreement, or to pay for or guarantee construction or completion thereof. The City, upon receipt of a written request therefor from a Mortgagee upon or after an Owner's default under a Mortgage, shall permit the Mortgagee to succeed to the rights and obligations of such Owner under this Agreement, provided that all defaults by such Owner hereunder that are reasonably susceptible of being cured are cured by the Mortgagee as soon as is reasonably possible. The Mortgagee thereafter shall comply with all of the provisions of this Agreement.

(c) Notice of Default to Mortgagee. If the City receives notice from a Mortgagee requesting a copy of any notice of default given to an Owner hereunder and specifying the address for service thereof, the City shall deliver to the Mortgagee concurrently with service thereof to all Owners, all notices given to such Owner describing all claims by the City that such Owner has defaulted hereunder. If the City determines that any Owner is in noncompliance with this Agreement, the

City also shall serve notice of noncompliance on the Mortgagee of the Owner's parcel of Property, concurrently with service thereof on all Owners. Until such time as the lien of the Mortgage has been extinguished, the City shall:

1) Take no action to terminate this Agreement with respect to the applicable parcel of Property or exercise any other remedy under this Agreement against the defaulting Owner, unless the Mortgagee shall fail, within thirty (30) days of receipt of the notice of default or notice of noncompliance, to cure or remedy or commence to cure or remedy such default or noncompliance; provided, however, that if such default or noncompliance is of a nature that cannot be remedied by the Mortgagee or is of a nature that can only be remedied by the Mortgagee after such Mortgagee has obtained possession of and title to the applicable parcel of Property, by deed-in-lieu of foreclosure or by foreclosure or other appropriate proceedings, then such default or noncompliance shall be deemed to be remedied by the Mortgagee if, within ninety (90) days after receiving the notice of default or notice of noncompliance from the City, (i) the Mortgagee shall have acquired title to and possession of the applicable parcel of Property, by deed-in-lieu of foreclosure, or shall have commenced foreclosure or other appropriate proceedings, and (ii) the Mortgagee diligently prosecutes any such foreclosure or other proceedings to completion.

2) If the Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings by reason of any process or injunction issued by any court or by reason of any action taken by any court having jurisdiction over any bankruptcy or insolvency proceeding involving the applicable Owner, then the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition.

(d) Performance by Mortgagee. Each Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Agreement with respect to any parcel of Property, to do any act or thing required of the Owner of such parcel of Property under this Agreement, and to do any act or thing not in violation of this Agreement, that may be necessary or proper in order to prevent termination of this Agreement with respect to such parcel of Property. All things so done and performed by a Mortgagee shall be as effective to prevent a termination of this Agreement as the same would have been if done and performed by the Owner instead of by the Mortgagee. No action or inaction by a Mortgagee pursuant to this Agreement shall relieve an Owner of its obligations under this Agreement. No performance by or on behalf of a Mortgagee shall cause it to become a "mortgagee-in-possession" or otherwise cause it to be deemed to be in possession of a defaulting Owner's parcel of Property or bound by or liable under this Agreement unless it becomes an Owner of a parcel of Property. In the event a Mortgagee becomes an Owner, such Mortgagee shall not be liable for any obligation hereunder of any previous Owner of the same parcel of Property that

arose prior to the time such Mortgagee became an Owner of such parcel of Property, except for (a) continuing non-monetary obligations that are capable of cure by Mortgagee and (b) monetary obligations for which the City provided a notice of default to Owner under Section 24(e) and, if applicable, to Mortgagee under Section 31(c), and neither Owner nor such Mortgagee thereafter cured such default of Owner's monetary obligation..

(e) Mortgagee's Consent to Modifications. Subject to the sentence immediately following, the City shall not consent to any material amendment or modification of this Agreement unless Owners provide the City with written evidence of each Mortgagee's consent, which consent shall not be unreasonably withheld, to the amendment or modification of this Agreement being sought. Each Mortgagee shall be deemed to have consented to such amendment or modification if it does not object to the City by written notice given to the City within thirty (30) days from the date written notice of such amendment or modification is given by the City or Owners to the Mortgagee, reasonable evidence of the delivery of which notice shall be provided to the City if given only by Owners.

32. Estoppel Certificate

Any Party from time to time may deliver written notice to any other Party requesting written certification that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and constitutes a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, or, if it has been amended or modified, specifying the nature of the amendments or modifications; and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and monetary amount, if any, of the default. A Party receiving a request hereunder shall endeavor to execute and return the certificate within ten (10) days after receipt thereof, and shall in all events execute and return the certificate within thirty (30) days after receipt thereof. However, a failure to return a certificate within ten (10) days shall not be deemed a default of the Party's obligations under this Agreement and no cause of action shall arise based on the failure of a Party to execute such certificate within ten (10) days. The City Manager shall have the right to execute the certificates requested by an Owner hereunder. The City acknowledges that a certificate hereunder may be relied upon by permitted transferees and Mortgagees. At the request of an Owner, the certificates provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form, and an Owner shall have the right to record the certificate for the affected portion of the Property at its cost.

33. Force Majeure

Notwithstanding anything to the contrary contained herein, a Party shall be excused for the period of any delay in the performance of any of its obligations hereunder, except the payment of money, when prevented or delayed from so doing by certain causes beyond its control, including, and limited to, major weather differences from the normal weather conditions for the South San Francisco area, war, acts of God or of the public enemy,

fires, explosions, floods, earthquakes, invasions by non-United States armed forces, failure of transportation due to no fault of the Party, unavailability of equipment, supplies, materials or labor when such unavailability occurs despite the applicable Party's good faith efforts to obtain same (good faith includes the present and actual ability to pay market rates for said equipment, materials, supplies and labor), strikes of employees other than such Owner, freight embargoes, sabotage, riots, acts of terrorism and acts of the government (other than City) and/or a material adverse change in the financial and commercial real estate demand markets, conditions which indicate an insufficient economic return, including resource scarcities that make construction prohibitively expensive and/or the inability of such Owner to obtain funds for its portion of the Project, due to the financial marketplace, (other than such Owner's inability to obtain financing related to such Owner's financial condition) and are beyond the control or without the fault of the party claiming an extension of time. The Party claiming such extension of time to perform shall send written notice of the claimed extension to the other Party within thirty (30) days from the commencement of the cause entitling the Party to the extension.

34. Rules of Construction and Miscellaneous Terms

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive.

(b) Time is and shall be of the essence in this Agreement.

(c) Where a Party consists of more than one person, each such person shall be jointly and severally liable for the performance of such Party's obligation hereunder.

(d) The captions in this Agreement are for convenience only, are not a part of this Agreement and do not in any way limit or amplify the provisions thereof.

(e) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California in effect on the date thereof.

(f) This Agreement may be executed in multiple originals, each of which is deemed an original, and may be signed in counterparts.

(g) This Agreement shall be interpreted such that its provisions apply separately to each phase of the Project. All references in this Agreement to "Owners" or "Owner" and all references to "Parties" or "Party," shall be deemed to refer only to the Owner(s) of the relevant phase. BMR-700 Gateway, BMR-750, 800, 850 Gateway, BMR-900 Gateway and BMR-1000 Gateway shall be responsible for all compliance burdens, obligations, and responsibilities imposed by, and entitled to benefits granted by, this Agreement only with respect to such Owner's parcel of property. All conditions of approval and mitigation measures of the Project shall similarly be interpreted and applied to create several obligations of each Owner with respect only to such obligations and benefits. In no event shall one Owner be considered in default due to action or inaction of another Owner with respect to obligations not imposed upon the first Owner.

(h) In the event City approves a lot line adjustment or parcel map that affects the boundaries between the Phases of the Property as referenced in Recital M of this Agreement, the City and relevant Owner(s) shall promptly amend this Agreement and any exhibits hereto to the extent necessary to reflect such changes to the Property.

35. Exhibits

Exhibits to this Agreement, including the following, are all incorporated into this Agreement by reference, as if set forth fully herein.

Exhibit A — Legal Description and Map of Property, showing the phases of the Project and the land currently owned by each Owner.

Exhibit B — Gateway Business Park Master Plan

Exhibit C — Gateway Business Park Phase 1 Precise Plan

Exhibit D — Conditions of Project Approval and Gateway Business Park Master Plan Project EIR Mitigation and Monitoring Program

Exhibit E — Applicable City Fees

Exhibit F — Conceptual Diagram of Future Anticipated Lot Line Adjustments and/or Parcel Map

36. Notices

All notices required or provided for under this Agreement shall be in writing and delivered in person (to include delivery by courier) or sent by certified mail, postage prepaid, return receipt requested or by overnight delivery service. Notices to the City shall be addressed as follows:

City Clerk
P.O. Box 711
South San Francisco, CA 94083

Notices to Owners shall be addressed as follows:

BMR-700 Gateway LP
17190 Bernardo Center Drive
San Diego, CA 92128
Attn: Vice President, Legal

BMR-750, 800, 850 Gateway LP
17190 Bernardo Center Drive
San Diego, CA 92128
Attn: Vice President, Legal

BMR-900 Gateway LP
17190 Bernardo Center Drive
San Diego, CA 92128
Attn: Vice President, Legal

BMR-1000 Gateway LP
17190 Bernardo Center Drive
San Diego, CA 92128
Attn: Vice President, Legal

A Party may change its address for notice by giving notice in writing to the other Party and thereafter notices shall be addressed and transmitted to the new address.

****

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the day and year first above written.

CITY:

CITY OF SOUTH SAN FRANCISCO

By: _____
Name: MIKE FUTRELL
Its: City Manager

ATTEST:

_____ for
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

OWNERS:

BMR-700 GATEWAY LP

By: _____
Name: Marie Lewis
Its: Vice President, Legal

BMR-750, 800, 850 GATEWAY LP

By: _____
Name: Marie Lewis
Its: Vice President, Legal

BMR-900 GATEWAY LP

By: _____
Name: Marie Lewis
Its: Vice President, Legal

BMR-1000 GATEWAY LP

By: _____
Name: Marie Lewis
Its: Vice President, Legal

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT CIVIL CODE §1189

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

State of California }
}
County of San Diego }

On August 21, 2018 before me, Serina E. Roth, Notary Public, personally appeared *Marie Lewis**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)

SERINA E. ROTH
Notary Public - California
San Diego County
Commission # 2200260
My Comm. Expires Jun 4, 2021

Exhibit A — Legal Description and Map of Property

EXHIBIT A

LEGAL DESCRIPTION

LANDS OF BMR - 1000 GATEWAY LP

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

Being all of Parcel A, as said parcel is described in "Lot Line Adjustment No. 36" recorded as Instrument No. 2008-71428 on June 19, 2008, San Mateo County Records and a portion of Parcel B, as said parcel is shown on the Map entitled "Parcel Map No. 89-263", filed for record on April 24, 1990, in Book 63 of Parcel Maps at Pages 79 to 80, inclusive, San Mateo County Records,

BEGINNING at the Westerly terminus of the Northerly line of said parcel, also being a point on the Southerly right-of-way line of Oyster Point Boulevard;

Thence along said Southerly right-of-way line, North 84° 19' 56" East, 13.68 feet;

Thence continuing along said Southerly right-of-way line, North 88° 14' 26" East, 378.24 feet;

Thence leaving said Southerly right-of-way line, South 02° 38' 04" East, 92.97 feet;

Thence South 46° 41 '39" East, 29.02 feet;

Thence North 88° 14' 26" East, 19.82 feet;

Thence South 02° 38' 04" East, 317.09 feet;

Thence South 87° 21' 56" West, 27.03 feet to the Northerly line of said Parcel B as shown on said Map;

Thence along said Northerly line, South 01° 42 '01" East, 392.52 feet;

Thence leaving said Northerly line, South 88° 14' 26" West, 97.12 feet;

Thence North 67° 45 '34" West, 200.97 feet;

Thence North 01° 45' 34" West, 174.09 feet;

Thence South 88° 14' 26" West, 49.88 feet;

Thence North 46° 45' 34" West, 38.18 feet;

Thence North 01° 45' 34" West, 41.22 feet to said Northerly line;

Thence along said Northerly line, North 84° 15' 28" West, 84.84 feet to the Westerly line of said Parcel A and a point on a non-tangent curve to the left, having a radius of 797.00 feet, to which point a radial line bears South 84° 15' 28" East, said curve being the Easterly right-of-way line of Gateway Boulevard as said Boulevard is shown on said Map;

Thence leaving said Northerly line and along said Easterly right-of-way line, Northerly along said curve, through a central angle of 08° 20' 31", an arc length of 116.04 feet;

Thence continuing along said Easterly right-of-way line, North 02° 35' 59" West, 278.35 feet to the beginning of a curve to the right, having a radius of 30.00 feet;

Thence along said curve, through a central angle of 86° 55' 55", an arc length of 45.52 feet to said Southerly right-of-way line of Oyster Point Boulevard and the point of beginning.

EXHIBIT A
(Continued)

Pursuant to Lot Line Adjustment No,. 2016-001, recorded February 3, 2017, as Recording No. 2017-011238, Official Records of San Mateo County.

APN(s): **015-023-430; 015-023-190 & 015-023-310**

END OF DESCRIPTION

EXHIBIT A

LEGAL DESCRIPTION

LANDS OF BMR - 750, 800, 850 GATEWAY LP

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

Being a portion of Parcel B, as said parcel is shown on the Map entitled "Parcel Map No. 89-263", filed for record on April 24, 1990, in Book 63 of Parcel Maps at Pages 79 to 80, inclusive, San Mateo County Records.

Beginning at the Northwesterly corner of said parcel, also being a point on the easterly right-of-way line of Gateway Boulevard;

Thence leaving said Easterly right-of-way line along the northerly line of said Parcel B, South 84° 15' 28" East, 84.84 feet;

Thence leaving said Northerly line, South 01° 45' 34" East, 41.22 feet;

Thence South 46° 45' 34" East, 38.18 feet;

Thence North 88° 14' 26" East, 49.88 feet;

Thence South 01° 45' 34" East, 174.09 feet;

Thence South 67° 45' 34" East, 200.97 feet;

Thence North 88° 14' 26" East, 97.12 feet;

Thence North 01° 42' 01" West, 329.52 feet to said Northerly line;

Thence along said Northerly line, North 87° 21' 56" East, 119.15 feet to the beginning of a curve to the right, having a radius of 45.00 feet;

Thence along said curve, through a central angle of 86° 14' 03", an arc length of 67.73 feet;

Thence South 06° 24' 01" East, 30.05 feet to the beginning of a curve to the left, having a radius of 25.00 feet;

Thence along said curve, through a central angle of 86° 19' 14", an arc length of 37.66 feet;

Thence North 87° 16' 45" East, 1.22 feet;

Thence South 02° 43' 15" East, 102.75 feet;

Thence North 87° 02' 51" East, 46.80 feet;

Thence South 38° 45' 44" East, 45.45 feet;

Thence South 51° 14' 16" West. 231.76 feet;

Thence South 44° 10' 10" West, 514.78 feet;

Thence North 47° 18' 04" West, 326.91 feet;

Thence North 51° 17' 19" West. 140.88 feet to the Westerly line of said Parcel B and the beginning of a non-tangent curve to the left, having a radius of 797.00 feet, to which point a radial line bears South 51° 17' 19" East, said curve being also the Easterly right-of-way line of Gateway Boulevard;

Thence along said Easterly right-of-way line, Northerly along said curve, through a central angle of 32° 58 '09", an

EXHIBIT A
(Continued)

arc length of 458.61 feet to the point of beginning.

Pursuant to Lot Line Adjustment No. 2016-001, recorded February 3, 2017, Recording No. 2017-011238, Official Records of San Mateo County.

APN: 015-023-300

END OF DESCRIPTION

EXHIBIT A

LEGAL DESCRIPTION

LANDS OF BMR - 700 GATEWAY LP

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

PARCEL ONE:

PARCEL A, PARCEL MAP NO. 89-263, FILED APRIL 24, 1990, BOOK 63 OF PARCEL MAPS, PAGES 79 & 80, SAN MATEO COUNTY RECORDS.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT APPURTENANT TO PARCEL ONE, ABOVE, FOR INGRESS AND EGRESS AS GRANTED TO ROUSE & ASSOCIATES - OYSTER POINT PHASE I LIMITED PARTNERSHIP, ET AL, RECORDED 4-6-88, SERIES NO. 88040829, SAN MATEO COUNTY RECORDS, OVER A PARCEL OF LAND DESCRIBED AS FOLLOWS:

A PORTION OF LOT 2 AS SAID LOT IS SHOWN ON THE MAP ENTITLED "FINAL MAP GATEWAY CENTER IN THE CITY OF SOUTH SAN FRANCISCO BEING A SUBDIVISION OF PARCEL 3 OF THE LANDS OF HOMART DEVELOPMENT COMPANY, AS SHOWN ON THAT CERTAIN PARCEL MAP (PM 81 195) RECORDED IN BOOK 52 OF PARCEL MAPS, AT PAGES 18 AND 19 OF THE OFFICIAL RECORDS OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN MATEO, STATE OF CALIFORNIA, ON OCTOBER 1, 1982, IN BOOK 107 OF MAPS, AT PAGES 27, 28, 29 AND 30, FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID LOT 2, SAID CORNER BEING LOCATED ON THE SOUTHEASTERLY LINE OF GATEWAY BOULEVARD (94 FEET IN WIDTH); THENCE SOUTH 51° 17' 19" EAST ALONG THE NORTHEASTERLY LINE OF SAID LOT 2, 106.00 FEET; THENCE LEAVING SAID NORTHEASTERLY LINE, SOUTH 38° 42' 41" WEST, 122.00 FEET; THENCE NORTH 51° 17' 19" WEST, 106.00 FEET TO THE AFOREMENTIONED SOUTHEASTERLY LINE OF GATEWAY BOULEVARD; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 38° 42' 41" EAST, 122.00 FEET TO THE POINT OF BEGINNING.

PARCEL THREE:

A NON-EXCLUSIVE EASEMENT APPURTENANT TO PARCEL ONE, ABOVE, FOR PRIVATE ACCESS AND UTILITY PURPOSES OVER, UNDER AND ACROSS THAT PORTION OF PARCEL B, PARCEL MAP NO. 89-263, FILED APRIL 24, 1990, BOOK 63 OF PARCEL MAPS, PAGES 79 & 80, SAN MATEO COUNTY RECORDS, DESIGNATED "12.00' PRIVATE ACCESS AND UTILITY EASEMENT APPURTENANT TO PARCEL A" ON SAID PARCEL MAP.

APN: 015-023-290

END OF DESCRIPTION

EXHIBIT A

LEGAL DESCRIPTION

LANDS OF BMR - 900 GATEWAY LP

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

PARCEL ONE:

Parcel D, Parcel Map No. 89-263, filed April 24, 1990, in Book 63 of Parcel Maps, Pages 79 and 80, San Mateo County Records.

PARCEL TWO:

A non-exclusive easement for private access purposes for private storm drain purposes over and across those portions of Parcels A & B, Parcel Map 89-263, filed April 24, 1990, in Book 63 of Parcel Maps, Pages 79 and 80, San Mateo County Records designated "10.00' Private Storm Drain Easement Appurtenant to Parcel D" on said Map.

PARCEL THREE:

A non-exclusive easement for private sanitary sewer purposes over, under and across those portions of Parcels B & C, Parcel Map 89-263, filed April 24, 1990, in Book 63 of Parcel Maps, Pages 79 and 80, San Mateo County Records designated as "Private Sanitary Sewer Easement Appurtenant to Parcel D" and" I 0.00' Private Sanitary Sewer Easement Appurtenant to Parcels B and D" on said Map.

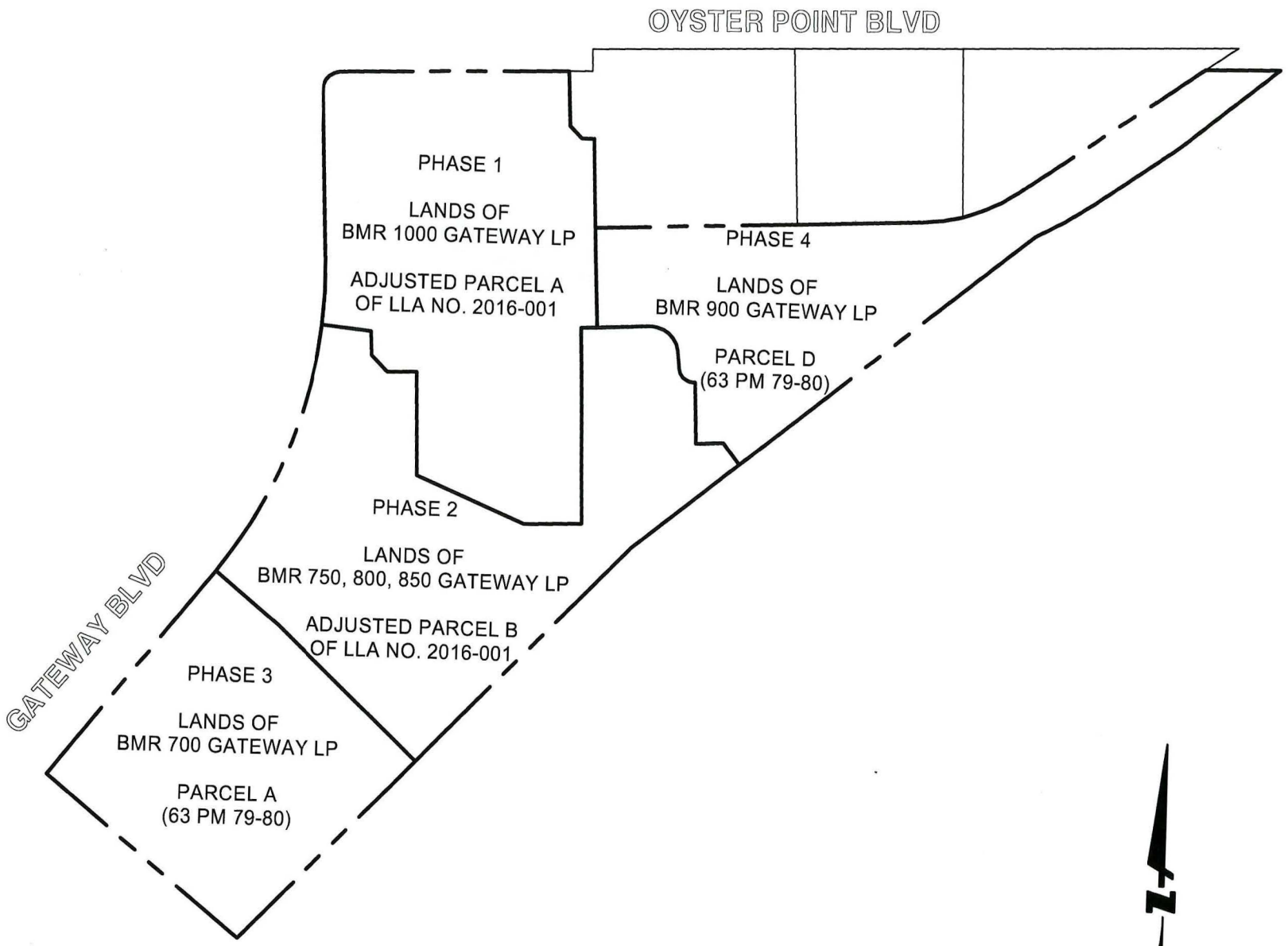
PARCEL FOUR:

A non-exclusive easement for private access purposes over and across those portions of Parcels B and C, Parcel Map No. 89-263, filed April 24, 1990, in Book 63 of Parcel Maps, Pages 79 and 80, San Mateo County Records designated "12.50' Private Access Easement Appurtenant to Parcels C and D", "12.50' Private Access Easement Appurtenant to Parcels Band D and "12.50' Private Access Easement Appurtenant to Parcel D" on said Map.

APN(s): 015-023-200 & 015-023-320

END OF DESCRIPTION

EXHIBIT A



ILLUSTRATIVE PLAT
EXISTING PARCELS

Exhibit E — Applicable City Fees

EXHIBIT E-1

1. FEES, TAXES, EXACTIONS, DEDICATION OBLIGATIONS, AND ASSESSMENTS

Owner agrees that Owner shall be responsible for the payment of the following fees, charges, exactions, taxes, and assessments (collectively, "**Assessments**") in connection with the development and construction of the Project. From time to time, the City may update, revise, or change its Assessments. Further, nothing herein shall be construed to relieve the Property from common benefit assessments levied against it and similarly situated properties by the City pursuant to and in accordance with any statutory procedure for the assessment of property to pay for infrastructure and/or services that benefit the Property. Except as indicated below, the amount paid for a particular Assessment, shall be the amount owed, based on the calculation or formula in place at the time payment is due, as specified below.

1.1 **Administrative/Processing Fees**. The Owner shall pay the applicable application, processing, administrative, legal and inspection fees and charges, as currently adopted pursuant to City's Master Fee Schedule and required by the City for processing of land use entitlements, including without limitation, General Plan amendments, zoning changes, precise plans, development agreements, conditional use permits, variances, transportation demand management plans, tentative subdivision maps, parcel maps, lot line adjustments, general plan maintenance fee, demolition permits, and building permits.

1.2 **Impact Fees (Existing Fees).** Except as modified below, existing impact fees shall be paid for net new square footage at the rates and at the times prescribed in the resolution(s) or ordinance(s) adopting and implementing the fees.

1.2.1 **East of 101 Traffic Impact Fee** (Resolution 84-2007). East of 101 Traffic Impact fees shall be paid for each Phase of the Project, in accordance with the resolution adopted by the City Council at their meeting of May 23, 2007, and shall be determined based on the application of the formula in effect at the time the City issues each building permit, and shall be payable prior to the issuance of such building permit.

1.2.2 **Oyster Point Grade Overpass Contribution Fee** (Resolutions 102-96 & 152-96). Oyster Point Grade Overpass Contribution fees shall be paid for each Phase of the Project, and shall be determined by the City Engineer, based on the application of the formula in effect at the time the City issues each building permit, and shall be payable prior the issuance of such building permit for each phase.

The fee will be calculated upon reviewing the information shown on the applicant's construction plans and the latest Engineering News Record San Francisco Construction Cost Index at the time of payment. The Engineering News Record San Francisco Construction Cost Index figure contained in the Oyster Point Grade Overpass Contribution fee calculation, is revised each month to reflect local inflation changes in the construction industry.

1.2.3 **East of 101 Sewer Impact Fee** (Resolution 97-2002). The City of South San Francisco has identified the need to investigate the condition and capacity of the sewer system within the East of 101 area. The existing sewer collection system was originally designed many years ago to accommodate warehouse and industrial use and is now proposed to accommodate uses, such as offices and biotech facilities, with a much greater sewage flow. These additional flows, plus groundwater infiltration into the existing sewers, due to ground settlement and the age of the system, have resulted in pumping and collection capacity constraints.

The applicant shall pay the East of 101 Sewer Facility Development Impact Fee, as adopted by the City Council at their meeting of October 23, 2002. Sewer Impact fees shall be paid for each Phase of the Project, and shall be determined based on the application of the formula in effect at the time the City issues each building permit, and shall be payable prior to the issuance of such building permit. The adopted fee is presently $3.19 per gallon of discharge per day (this fee is adjusted on a yearly basis). It is determined that Office/R&D generates 400 gallons per day per 1000 square feet of development.

1.2.4 **Childcare Impact Fee** (SSFMC, ch. 20.310; Ordinance 1301-2001).

(a) Prior to receiving a Building Permit for each Phase of the Project, the Owner shall pay the City's Childcare Fee, as described in South San Francisco Municipal Code Chapter 20.310.

(b) Additionally, if the existing childcare facility located at 850 Gateway Boulevard remains in place, and retains its status as a fully licensed and operational childcare facility serving at least 100 children, no additional childcare requirement (other than the City's Childcare Fee described in Section 1.2.4(a) of this Exhibit E-1) will be imposed. However, if the 850 Gateway Boulevard facility is eliminated, the Owner shall also comply with the following:

(i) Owner shall construct and have ready for occupancy, a childcare facility of approximately 8,000 square feet designed to accommodate a minimum of 100 children within the Project or within one mile of the Project no later than the earlier of::

(1) the date when the stabilized employee population within the Project reaches that required to sustain a facility that accommodates a minimum of 100 children; or

(2) occupancy of the final building to be constructed under the Gateway Master Plan; or

(3) one year prior to the expiration of this Agreement.

Accordingly, Owner shall submit design plans for the childcare facility no later than December 31, 2021, and shall obtain all required permits, including building permits and commence construction of the facility no later than December 31, 2022. If the childcare facility is open to the public, City and Owner may mutually agree to allow the City to operate the facility.

(ii) Notwithstanding the foregoing, if circumstances prevail such that new construction does not exceed 650,000 square feet and the existing childcare facility at 850 Gateway Boulevard is eliminated, Owner may alternatively meet this requirement by providing a one dollar ($1) per square foot childcare in-lieu fee for the Net New Construction (defined below) that has occurred as of December 31, 2022. "Net New Construction" means the total square footage of any permitted building constructed to implement the Project, reduced by the square footage of any permitted building that existed on the Effective Date and has been demolished to implement the Project. Each year after 2013, the one dollar ($1) per square foot fee shall automatically be increased at a rate equal to the Change from Prior Year for the Consumer Price Index—All Urban Consumers, for the San Francisco-Oakland-San Jose Area. If Owner elects to satisfy this childcare requirement through payment of this in-lieu fee, the in-lieu fee shall be paid no later than December 31, 2022. If building permits are issued for additional Net New Construction between December 31, 2022 and December 31, 2025, such Net New Construction will be subject to a childcare in-lieu fee no greater than the childcare in-lieu fee set forth in this paragraph 1.2.4(b)(ii).

(iii) If the 850 Gateway Boulevard childcare facility is eliminated or not fully licensed and operational as described above, and Owner fails to either construct a new childcare facility in accordance with the provisions of paragraph 1.2.4(b)(i), or pay the in-lieu fee in accordance with the provisions of paragraph 1.2.4(b)(ii), Owner shall instead pay a fee equal to the City's estimated reasonable costs, including all costs associated with site acquisition (including, if necessary, eminent domain), environmental review, permitting, and all other expenses and fees, including reasonable attorneys' fees, required to construct a childcare facility of equivalent size and quality as that described in paragraph 1.2.4(b)(i).

1.2.5 **Public Safety Impact Fee.** (Resolution 97-2012) Prior to receiving a building permit for each Phase of the Projects, the Owner shall pay the Public Safety Impact Fee, as set forth in Resolution No. 97-2012, adopted on December 10, 2012 to assist the City's Fire Department and Police Department with funding the acquisition and maintenance of Police and Fire Department vehicles, apparatus, equipment, and similar needs for the provision of public safety services.

1.2.6 **Sewer Capacity Charge.** (Resolution 39-2010) Prior to receiving a building permit for each Phase of the Projects, the Owner shall pay the Sewer Capacity Charge, as set forth in Resolution No. 39-2010.

1.3 **Other Exactions.**

1.3.1 **Park In-Lieu Fee**. Owner shall pay a Park In-Lieu Fee of $4.78 per square foot of development, excluding parking structures. The fee payable may be reduced if the City adopts such a Park In-Lieu Fee applicable to developments in the East of 101 area similar to the Gateway Business Park Master Plan Project and the amount owed per square foot under that Park In-Lieu Fee is less than $4.78 per square foot in which case Owner shall pay the Park In-Lieu Fee applicable to developments in the East of 101 area, rather than the $4.78 per square foot fee. Owner shall receive a credit to offset a portion of the Park In-Lieu Fee, for development of private open space created within the Gateway Master Plan. Owner's credit shall be identical to

the credit, if any, allowed under the Park In-Lieu Fee program, if implemented, except that (i) in no case, shall owner receive a credit offsetting less than 25% or more than 50% of Owner's required fee; and (ii) in no case shall zoning or building code required open areas, including but not limited to the ten-percent landscaping requirement (SSFMC § 20.300.007(F)(1)(a)) and setbacks, be counted towards any offsetting credit. Owner shall pay the Park In-Lieu Fee once per phase, upon issuance of the first tenant improvement permit for each phase, based upon the total square footage approved for development for that phase.

1.3.2 **Transit Station or Ferry Terminal Enhancement Contribution**. Owner shall pay an in-lieu fee to be used for enhancing, enlarging, repairing, restoring, renovating, remodeling, redecorating, maintaining, and/or refurbishing the Caltrain Station located at 590 Dubuque Avenue, the Oyster Point Ferry terminal and/or their associated facilities. The in-lieu fee shall be in the amount of one dollar ($1.00) per square foot of building area excluding parking structures for each phase of development and shall be payable in two (2) equal installments per phase. One-half (1/2) of the in-lieu fee shall be payable substantially concurrently with, but not later than, the issuance of the building permit for the shell of the building, and one-half (1/2) of the in-lieu fee shall be payable prior to the issuance of a Certificate of Occupancy for the shell of the building.

1.4 **User Fees.**

1.4.1 **Sewer Service Charges** (assessed as part of property tax bill)

1.4.2 **Stormwater Charges** (assessed as part of property tax bill)

2. FEE CREDITS

The Project includes the demolition of six (6) single story R&D office buildings. The calculation for fee credits cannot be calculated at this time because the areas of those buildings were not provided. Once provided, the City will be able to calculate the fee credits for the Oyster Point Grade Overpass Contribution Fee, East of 101 Traffic Impact Fee, Sewer Impact Fee, Childcare Impact Fee, childcare in-lieu fee (if applicable), Transit Station Enhancement Fee, and Public Safety Fee.

Exhibit E-2
Illustrative Estimated Fee Table Including Fee Credits

Gateway Business Park Master Plan
Illustrative calculations of estimated proposed fees for Master Plan and Phase I-Precise Plan

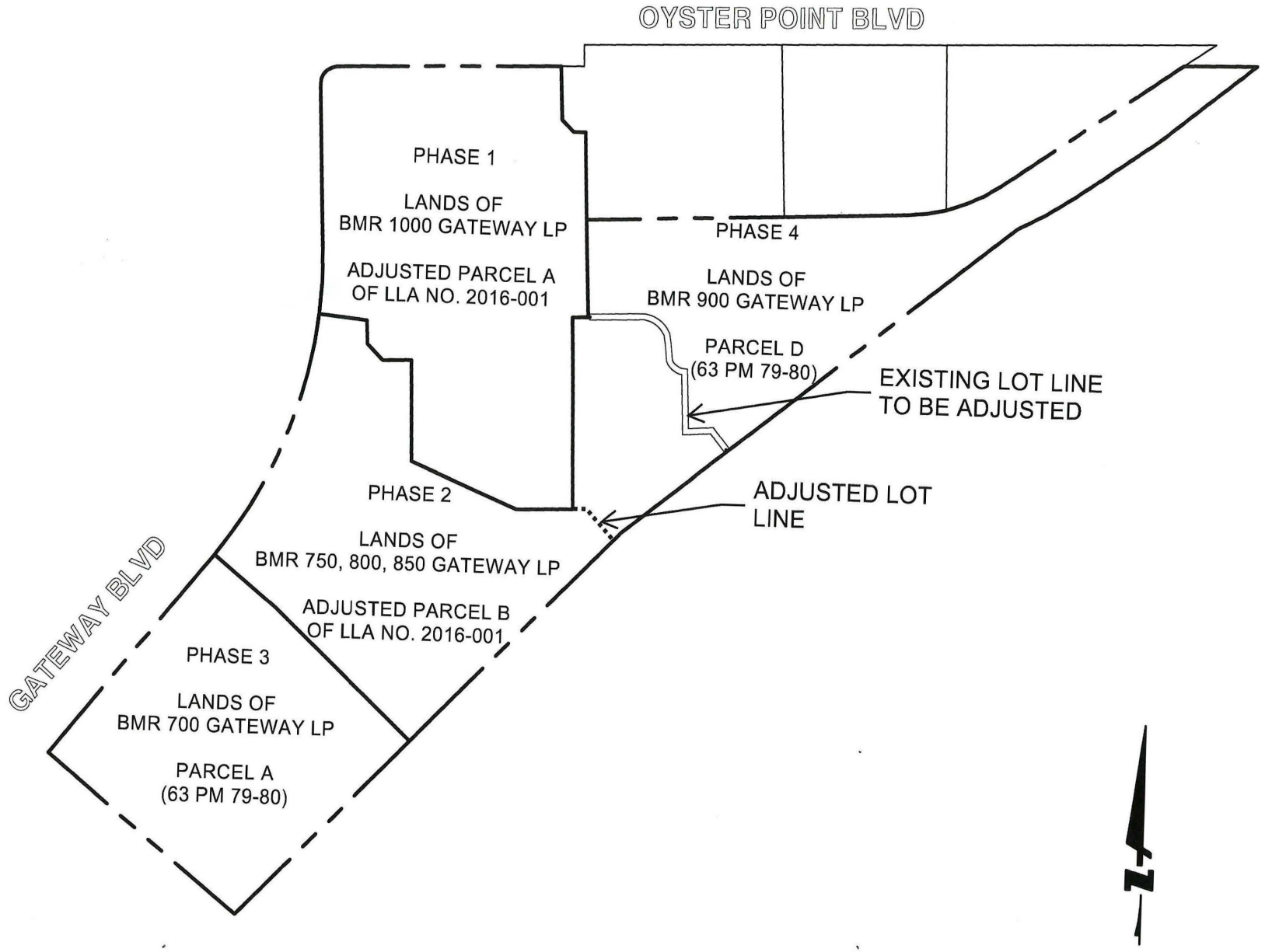
	Area Estimations*	
	All Phases	Phase 1
R&D	1,303,114	451,485
Amenities	47,938	47,938
Total	1,351,052	499,423
Existing R&D Demolished	284,000	107,500
Net New GSF	1,067,052	391,923

	Estimated Existing and Proposed Fees, Including Fee Credits			
			All Phases	Phase I
Fee Category	*Rate*		*Fee*	*Fee*
East of 101 Traffic Impact Fee (Resolution 84-2007)	$5.22	per NN GSF - R&D (1)	$ 5,319,775.08	$ **1,795,601.70**
	$5.22	per NN GSF - Amenity (2)(4)	$ 250,236.36	$ **250,236.36**
Oyster Point Grade Overpass Contribution Fee (Resolutions 102-96 & 152-96)	varies by use	R&D and Amenity (2)	$ 1,378,900.85	$ **506,416.77**
East of 101 Sewer Impact Fee (Resolution 97-2002)	$ 4.25	per NN GSF (any use)	$ 1,813,938.40	$ **666,269.10**
Sewer Capacity Fee (Resolution 39-2010)	varies by use	R&D Office	TBD (3)	TBD (3)
General Plan Maintenance Fee (Resolution 74-2005)	0.0015	of construction value, per GSF (Assume value is $300/sf)	$ 607,973.40	$ **224,740.35**
Child Care Facility (Section 12 of DA)	$ 1.00	per NN GSF or construction of new child care facility	$ 1,067,052.00	$ **391,923.00**
Child Care Impact Fee (SSFMC 20.310)	$ 0.57	per NN GSF for R&D	$ 580,894.98	$ **196,071.45**
	$ 0.68	per NN GSF for Amenity Bldg. (4)	$ 32,597.84	$ **32,597.84**
Transit Station Enhancement Fee (Cap) (Section 12 of DA)	$ 1.00	per NN GSF	$ 1,067,052.00	$ **391,923.00**
Park-in-Lieu Fee (Section 12 of DA)	$ 4.78	per GSF or provide 0.5 acres of open space per 1,000 employees: Credit may be given for development of private open space but in no case shall owner receive a credit offsetting less than 25% of Owner's required fee, or more than 50% of Owner's required fee	$ 6,458,028.56	$ **2,387,241.94**
Public Safety Impact Fee (Resolution 97-2012)	$ 0.44	per NN GSF	$ 469,502.88	$ **172,446.12**
Total of Fees			$ **19,046,002.35**	$ **7,015,467.63**
Fees per GSF			$ 14.10	$ 14.05

* The areas are estimated and provided for the purpose of illustrating the fee calculation. The actual fee and fee credit for each phase will be calculated at the time of building permit submittal.

(1) - NN GSF refers to "Net New Gross Square Footage" and includes credits for demolished existing building areas, typical.
(2) - Amenities building viewed as accessory use to R&D use, and therefore charged at the R&D rate structure.
(3) - Sewer Capacity Fee calculation will vary by use based on application of Resolution 39-2010.
(4) - Fee credit allocated under R&D Fee.

EXHIBIT F



ILLUSTRATIVE PLAT
FUTURE LOT LINE ADJUSTMENT