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DEVELOPMENT AGREEMENT

By and Between

THE CITY OF SAN BRUNO

and

MARTIN/REGIS SAN BRUNO ASSOCIATES, L. P.

for

THE CROSSING

February 7, 2002
EFFECTIVE DATE

City of San Bruno, California

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EXHIBITS

Exhibit A	Property Description
Exhibit A-1	Map of Property
Exhibit B	Specific Plan
Exhibit C	Full Copies of Existing Project Approvals
Exhibit D	Full Copy of Ordinance No. 1653 Authorizing this Agreement
Exhibit E	Affordable Housing Plan
Exhibit F	Insurance
Exhibit G	Sample Compliance Evaluation Form

DEVELOPMENT AGREEMENT

CITY OF SAN BRUNO

THE CROSSING PROJECT

THIS DEVELOPMENT AGREEMENT ("Development Agreement") is made and entered in the City of San Bruno on the 7th day of February, 2002, by and between the City of San Bruno, a Municipal Corporation ("City"), and Martin/Regis San Bruno Associates, L. P., a Delaware limited partnership ("Martin/Regis"), pursuant to the authority of Sections 65864 *et seq.*, of the Government Code and City Council Resolution No. 1986-77.

RECITALS

- A. The City Council has found that development agreements will strengthen the public planning process, encourage private participation in comprehensive planning by providing a greater degree of certainty in that process, reduce the economic costs of development, allow for the orderly planning of public improvements and services, allocate costs to achieve maximum utilization of public and private resources in the development process, and assure that appropriate measures to enhance and protect the environment are achieved. The City has enacted Development Agreement Resolution 1986-77 establishing the procedures and requirements for the consideration of development agreements thereunder pursuant to California Government Code Section 65864 *et seq.*
- B. California Government Code Section 65864 *et seq.*, and Resolution 1986-77 authorize the City to enter into an agreement for the development of real property with any person or entity having a legal or equitable interest in such property in order to establish certain development rights in such property.
- C. Martin/Regis is a Delaware limited partnership organized and existing under the laws of the State of Delaware, in good standing thereunder, and qualified to conduct business in California. Martin/Regis is the fee owner of that certain real property consisting of approximately 20.1 acres within the City of San Bruno, County of San Mateo, State of California, which is legally described in Exhibit A and shown on the map attached hereto as Exhibit A-1 ("Property"). The Property is part of the San Bruno Redevelopment Project, the Redevelopment Plan for which was approved and adopted by the City Council of the City on July 6, 1999, by Ordinance No. 1620.
- D. Martin/Regis proposes the development of the Property as a compact, interactive, and pedestrian-friendly community based on the principles of transit-oriented development offering multi-family, senior, and affordable housing, up to 500 hotel rooms, meeting space, restaurant space, neighborhood-serving retail, office space, recreational opportunities, and parking facilities, in

the manner described in that certain Specific Plan ("Specific Plan") referred to in Exhibit B, as further described and conditioned in this Development Agreement ("Project"). The Project is comprised of the following components each of which is described in the Specific Plan and shown on the map attached at Exhibit A-1: "Senior Housing," "Hotel," "Residential A&B," "Office/Residential C Flex," and "Office/Residential D&E Flex" (collectively, "Project Components").

- E. At a special municipal election on June 5, 2001, pursuant to Local Ordinance 1284, voters approved Initiative Measure E, attached in Exhibit C, authorizing development of the Project up to the maximum heights allowed by the Specific Plan and the development of an above-grade parking structure.
- F. The City Council has found that this Development Agreement is consistent with its General Plan and it has been reviewed and evaluated in accordance with Resolution 1986-77.
- G. It is the intent of City and Martin/Regis to establish certain conditions and requirements related to review and development of the Project, which are or will be the subject of subsequent development applications and land use entitlements for the Project as well as this Development Agreement.
- H. City desires the timely, efficient, orderly and proper development of the Project. City also desires to encourage quality economic growth and to expand its employment base within City thereby advancing the socioeconomic interests of its citizens as well as the interests of the region and the State. Because of the logistics, magnitude of the expenditure and considerable lead time prerequisite to developing the Project, Martin/Regis desires assurances that the Project can proceed without disruption caused by a change in City's planning policies and requirements except as provided in this Development Agreement, which assurance will thereby reduce the actual or perceived risk of planning for and proceeding with construction of the Project.
- I. City has determined that by entering into this Development Agreement (1) City will promote orderly growth and quality development within the Project in accordance with the goals and policies set forth in the General Plan and Specific Plan, (2) City will receive increased tax revenues from tenants and owners of businesses within the Project, and (3) City will benefit from increased employment, commercial, housing and recreational opportunities created by the Project for residents of the City.
- J. The following development approvals, entitlements, policies and findings have been adopted by City after duly noticed public hearings and other applicable procedures and applied to the Project:
 - (1) On January 9, 2001, the City certified a Final Environmental Impact Report for the Project (Resolution No. 2001-1) and on December 11, 2001, an Addendum to the EIR (Resolution No. 2001-82) (collectively, the "Crossing EIR").

- (2) On January 9, 2001, the City approved a General Plan Amendment (Resolution No. 2001-2).
- (3) On January 9, 2001, the City approved a Specific Plan (Resolution No. 2001-3) and on December 11, 2001, a Specific Plan Amendment (Resolution No. 2001-82) (collectively, the "Specific Plan") that includes the major development, circulation and infrastructure elements for the Project.
- (4) On January 23, 2000, the City adopted an ordinance amending the San Bruno Zoning Ordinance and Zoning Map to establish the zoning for the Property (Ordinance No. 1635).
- (5) On June 5, 2001, voters approved Initiative Measure E by majority vote at a special municipal election pursuant to Local Ordinance 1284.

The approvals and development policies described in subparagraphs (1) through (5), inclusive, above (including but not limited to all conditions of approval and the Crossing EIR mitigation monitoring program) are collectively referred to herein as the "Existing Approvals." All the Existing Approvals are incorporated herein by reference, and full copies are provided as Exhibit C. References herein to Existing Approvals shall also include Final City Future Approvals (defined in Recital K., below) unless otherwise noted.

- K. Future approvals required from City include, without limitation, precise development plans, subdivision maps, lot line adjustments, dedications, architectural review permits, planned unit development permits, conditional use permits, encroachment permits, demolition permits, grading permits, building permits, and certificates of occupancy. Future approvals required from other agencies for on- and off-site elements of the Project include, without limitation, California Transportation Authority ("CalTrans") approval of a 4-way, signalized intersection at El Camino Real and Road A (or an alternative intersection plan as provided in Section 6.7(b)), Federal Aviation Administration review (FAR Part 77 related to heights), Airport Land Use Committee review (San Mateo County Comprehensive Airport Land Use Plan related to compatibility with the San Francisco International Airport), and C/CAG (Traffic Congestion Management Plan). The future approvals from the City are referred to collectively as the "City Future Approvals." The future approvals from other agencies are referred to collectively as "Other Agency Future Approvals." The term "Future Approvals" refers to both the City Future Approvals and the Other Agency Future Approvals. Future Approvals shall also include any subsequent or supplemental environmental impact report required by Public Resources Code Section 21166 or other environmental review required under any applicable provision of the California Environmental Quality Act, including all mitigation measures, monitoring programs and conditions adopted as a result of any such environmental review. References herein to a "Final City Future Approval" means a City Future Approval, which has received final approval and is fully effective according to its terms and conditions.

- L. Future financing mechanisms ("Financing Mechanisms") to finance the capital costs of certain public improvements required to develop the Project and to maintain certain landscaped, recreation, and open space areas may include, without limitation: (1) development fees, assessment districts, special financing districts, street lighting and maintenance districts and other mechanisms for special assessments and special taxes levied on property and owners within the boundaries of the Project; and (2) property owner and homeowner associations to pay for the on-going costs of operation, maintenance, repair and replacement of private open space, private recreation and private park and private landscaped areas. In proposing a particular Financing Mechanism to City, Martin/Regis shall comply with any applicable requirements of the Existing Approvals pertaining to Financing Mechanisms and shall demonstrate to the satisfaction of City in its sole and absolute discretion that funding of the capital improvements and/or maintenance requirements are economically sound and feasible and meet City's legal, policy and underwriting criteria.
- M. Subject to the conditions and requirements of this Development Agreement, Martin/Regis intends to sell the Hotel and Senior Housing Project Components to other developers who will apply to the City for required Future City Approvals to complete development of their portions of the Property.
- N. The terms and conditions of this Development Agreement have undergone extensive review by City staff, its Planning Commission and its City Council at publicly noticed meetings and have been found to be fair, just and reasonable and in conformance with the San Bruno General Plan, and, further, the City Council finds that the economic interests of City's citizens and the public health, safety and welfare will be best served by entering into this Development Agreement.
- O. City and Martin/Regis have reached mutual agreement and desire to voluntarily enter into this Development Agreement to facilitate development of the Project subject to conditions and requirements set forth herein.
- P. The parties anticipate that the City and/or the Redevelopment Agency of the City of San Bruno ("Redevelopment Agency") may enter (but acknowledge that neither has any obligation to do so) into additional agreement(s) providing for certain public agency participation and/or assistance in connection with the development on the Property of parking facilities to encourage the development of the Hotel as provided in this Development Agreement. The parties also anticipate that the City and/or the Redevelopment Agency may enter (but acknowledge that neither has any obligation to do so) into additional agreement(s) providing for certain public agency participation and/or assistance in connection with the affordable housing units to be developed on the Property in accordance with the Affordable Housing Plan. With the exception of the foregoing potential public agency participation and/or assistance, neither the City nor the Redevelopment Agency currently intends to provide any additional assistance to the Project as it is currently conceived.

- Q. On January 8, 2002, the City Council of the City of San Bruno adopted Ordinance No. 1653 approving this Development Agreement. The Ordinance took effect on February 7, 2002. Ordinance No. 1653 is incorporated herein by reference and a copy is provided at Exhibit D.

AGREEMENT

NOW, THEREFORE, with reference to the foregoing recitals and definitions and in consideration of the mutual promises, obligations and covenants herein contained, City and Martin/Regis agree as follows:

1. Definitions. The following defined terms are used in this Development Agreement:

"Affordable Housing Plan" is defined in Section 6.8.

"Applicable Law" is defined in Section 6.4(a).

"City" means the City of San Bruno.

"CC&R's" is defined in Section 9.2(d).

"City Future Approvals" is defined in Recital K.

"Compliance Evaluation Form" is defined in Section 11.2.

"Crossing EIR" is defined in Recital J.

"Development Agreement" means this Development Agreement.

"Development Impact Fee" is defined in Section 6.3(c).

"Effective Date" of this Development Agreement is defined in Section 5.1.

"Existing Approvals" is defined in Recital J.

"Extension" of the term of this Development Agreement is defined in Section 5.2.

"Final City Future Approvals" is defined in Recital K.

"Financing Mechanisms" is defined in Recital L.

"Future Approvals" is defined in Recital K.

"Hotel" means a full service flagship hotel that offers up to 500 guest rooms for overnight stay; meeting facilities; banquet and special events facilities; food services, including formal catering services for weddings, banquets and other special events; and

a variety of other personal services offered to hotel guests; and incorporates, either within or directly adjacent to the Hotel, a full service, sit-down restaurant with full wait staff, including host or hostess.

"Initial Term" of this Development Agreement is defined in Section 5.2.

"Martin/Regis" means Martin/Regis San Bruno Associates, L. P., a Delaware limited partnership, consisting of TMG-Regis San Bruno LLC, a California limited liability company, as the sole general partner, and in all cases, except as specifically noted, includes permitted and approved transferees and assignees who qualify as such under this Development Agreement.

"Master Tentative Map" is defined in Section 5.5.

"Minor Amendment" is defined in Section 10.3.

"Major Amendment" is defined in Section 10.2.

"Mortgage" is defined in Section 17.1.

"Notice of Breach" is defined in Section 12.2.

"Notice of Non-Breach" is defined in Section 12.2.

"Mortgagee" is defined in Section 17.1.

"Open Space" is defined in Section 6.3(d).

"Other Agency Future Approvals" is defined in Recital K.

"Other Vesting Statute" is defined in Section 16.

"Park Dedication and Fee Ordinance" is defined in Section 6.3(d).

"Permitted Assignee" is defined in Section 15.2.

"Permitted Assignment" is defined in Section 15.2.

"Permitted Delay" is defined in Section 10.4.

"Processing Extension" is defined in Section 5.2.

"Processing Fee" is defined in Section 6.3(a).

"Project" is defined in Recital D.

"Project Components" is defined in Recital D.

"Property" is defined in Recital C and Section 2, described in Exhibit A and shown on the map set forth in Exhibit A-1.

"Specific Plan" is defined in Recital D and described in Recital J and Exhibit B.

2. Description of Property. The Property which is the subject of this Development Agreement is described in Exhibit A attached hereto and shown on the map attached hereto as Exhibit A-1 ("Property").

3. Interest and Qualifications of Martin/Regis. Martin/Regis represents and warrants to City that on the Effective Date it is the sole fee owner of the Property as described above, and that no other person or entity holds any legal or equitable interests in the Property.

Martin/Regis and its general partner represent and warrant:

(a) that as of the Effective Date of this Development Agreement Martin/Regis and its general partner entering into this Development Agreement are both: (i) duly organized and validly existing under the laws of the State of Delaware; (ii) qualified and authorized to do business in the State of California and have duly complied with all requirements pertaining thereto; and (iii) are in good standing and have all necessary powers under the laws of the State of California to own property and in all other respects enter into and perform the undertakings and obligations of Martin/Regis under this Development Agreement;

(b) that no approvals or consents of any persons are necessary for the execution, delivery or performance of this Development Agreement by Martin/Regis and its general partner, except as have been obtained;

(c) that the execution and delivery of this Development Agreement and the performance of the obligations of Martin/Regis hereunder have been duly authorized by all necessary partnership action and, as applicable, partnership approvals; and

(d) that this Development Agreement is a valid obligation of Martin/Regis and its general partner enforceable in accordance with its terms.

4. Relationship of City and Martin/Regis It is understood that this Development Agreement is a contract that has been negotiated and voluntarily entered into by City and Martin/Regis and that the Martin/Regis is an independent contractor and not an agent of City. The City and Martin/Regis 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 therewith shall be construed as making the City and Martin/Regis joint venturers or partners.

5. Effective Date and Term of Agreement.

5.1 Effective Date. This Development Agreement shall be effective upon its execution by the parties pursuant to Government Code Section 65868.5

(the execution date being the "Effective Date"), which date in no event shall be earlier than the effective date of Ordinance No. 1653 approving this Development Agreement. The parties acknowledge that Section 65868.5 of the Government Code and Resolution 1986-77 require that the City Clerk shall record this Development Agreement with the County Recorder no later than 10 days after City executes this Development Agreement, and that the burdens of this Development Agreement shall be binding upon, and the benefits of this Development Agreement shall inure to, all successors in interest to the parties to this Development Agreement.

- 5.2 Term. The term of this Development Agreement shall commence upon the Effective Date and shall extend for a period of ten (10) years thereafter (the "Initial Term") unless said Initial Term is terminated, modified or extended by circumstances set forth in this Development Agreement.

The Initial 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. In establishing and agreeing to such Initial Term, City has determined that the Existing Approvals and this Development Agreement incorporate sufficient provisions to permit City to monitor adequately and respond to changing circumstances and conditions in granting permits and approvals and undertaking actions to carry out the Project. Consistent with the foregoing objectives, City and Martin/Regis contemplate it may be deemed mutually desirable to consider an extension of such Initial Term for up to one additional three (3) year period, as follows:

Provided City has not terminated this Development Agreement or Martin/Regis' rights hereunder, Martin/Regis may request City to extend the Initial Term of this Development Agreement for up to an additional three (3) years (the "Extension") by delivering to City not earlier than 270 days nor later than 120 days prior to the termination date of the Initial Term a written request for the Extension of up to three (3) additional years. The burden shall be on Martin/Regis to demonstrate, to the reasonable satisfaction of City, the necessity for the Extension. Upon receipt of such request, City shall undertake a review of Martin/Regis' good faith compliance with the terms of this Development Agreement in the same manner as set forth in Section 11 for an annual review and both Martin/Regis and City shall comply with the provisions of Section 11 with respect to such review so that it can be completed prior to the termination date of the Initial Term. City may deny, condition or shorten the time of Martin/Regis' request for the Extension if, following the review, the City Council of City determines, in the exercise of its legislative discretion, any of the following: (1) that Martin/Regis has not demonstrated, to the reasonable satisfaction of City, the necessity for the Extension; or (2) that Martin/Regis is in uncured material default under this Development Agreement; or (3) that Martin/Regis has not completed development of all of the infrastructure improvements shown on the Master Tentative Map; or (4) that Martin/Regis has not fully satisfied other requirements

and conditions, as set forth in the Existing Approvals; or (5) that Martin/Regis has not established or is not participating in the Financing Mechanisms required for the development of the Property; or (6) that Martin/Regis has failed to complete construction of and obtain certificates of occupancy for the Hotel and at least two hundred thirty (230) residential units in the Senior Housing and/or Residential A&B Project Components. City may condition its approval of the Extension on requiring an express written assumption and agreement by Martin/Regis or any of its successors or assigns to be bound by and comply with, in the remaining development of the Property, health or safety regulations of City then in effect but not otherwise applicable to the Property, and development, transportation and traffic mitigation measures and fees then in effect but not otherwise applicable to the Property, notwithstanding any other provision of this Development Agreement to the contrary. In order to complete its review, City may extend the Initial Term for such reasonable period of time, not to exceed 60 days, as may be required for it to consider and make any such determination to deny, condition or shorten the time of the Extension ("Processing Extension").

If at the end of the Initial Term (plus any Processing Extension), City has not denied, conditioned or shortened the time of the Extension, the Extension shall be deemed to be denied. If the term of this Development Agreement is extended, City shall record an instrument giving notice of the Extension and the termination date thereof.

Following the expiration of the term of this Development Agreement (including any Extension), or the earlier completion of development of the Project and all of the Martin/Regis' obligations in connection therewith (except for continuing payments and obligations under the Financing Mechanisms), this Development Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions of Section 10.8 hereof.

5.3 Build-Out Schedule. The proposed date of completion of construction of the Project is on or before the expiration date of this Development Agreement. At the time of entering into this Development Agreement and at the time of each annual review thereafter pursuant to Section 11, and from time to time, as reasonably requested by City, Martin/Regis shall submit to City a plan showing the intended build-out schedule of the portions of the Project that have not yet been completed, together with any other information pertaining to the Project reasonably requested by City. The build-out plan shall be advisory and shall not be binding on Martin/Regis.

5.4 City's Right to Condition Final Map Approval. Notwithstanding any other provision of this Development Agreement to the contrary, Martin/Regis acknowledges and agrees that City may in its sole and absolute discretion condition its approval of final maps for the Property upon Martin/Regis' compliance with various requirements and

conditions deemed necessary by City to implement the Specific Plan (but only to the extent that such requirements and conditions are not in conflict with the Existing Approvals and the provisions of this Development Agreement, including without limitation the provisions of Sections 6.3, 6.4 and 6.7) including, but not limited to, the scheduling and phasing of dedications and off-site and on-site public improvements and facilities; the establishment and participation by Martin/Regis and/or the Property in Financing Mechanisms; the provision, phasing and location of affordable housing in accordance with the Affordable Housing Plan; the provision, phasing and location of public transit facilities and other improvements to serve the Project; a precise development plan or plans approved or to be approved by City; and other conditions deemed appropriate by City under the circumstances.

5.5 Master Tentative Map Approval; City's Right to Terminate. Promptly following the Effective Date of this Development Agreement, Martin/Regis shall prepare and submit to City a master tentative map for the Hotel, Residential A&B, and Senior Housing Project Components ("Master Tentative Map"). The Master Tentative Map shall be consistent with all Existing Approvals and shall include all backbone infrastructure for the aforementioned Project Components. City may impose such conditions of approval as it deems reasonably necessary or desirable; provided, however, such conditions of approval shall not conflict with the Existing Approvals or this Agreement. In the event that within two hundred seventy (270) days from the Effective Date of this Development Agreement, or by such later date as the parties may mutually agree in writing:

- (a) City has not approved the Master Tentative Map for the Project; or
- (b) Martin/Regis has not in writing expressly consented to City's conditions of approval of the Master Tentative Map and waived all objections thereto;

then, in either of such events, City may terminate this Development Agreement by giving Martin/Regis written notice of such termination, and the provision of Section 10.4 shall not be applicable to City's rights of termination. Following termination of this Agreement pursuant to this Section 5.5, neither Martin /Regis nor any successor or assign of Martin/Regis shall have any rights or obligations hereunder (except for those obligations that, by their terms, survive termination).

5.6 CalTrans' Approval of El Camino Real/Road A Traffic Signal; Martin/Regis' Right to Terminate. If, by March 30, 2002, or such later date as Martin/Regis agrees in writing, CalTrans has not approved a Preliminary Study Report/Project Report ("PSR/PR") for the El Camino Real/Road A Traffic Signal or, if, by March 30, 2003, or such later date as Martin/Regis agrees in writing, the City has not commenced construction of the El Camino Real/Road A Traffic Signal, then Martin/Regis, in its

sole discretion, may either (a) request that City, in its reasonable discretion, approve an alternative access plan for Road A in accordance with Section 6.7(b); or (b) provide the City with written notice that it will deem the delay to be a Permitted Delay pursuant to Section 10.6, for a period not to exceed two hundred seventy (270) days. Martin/Regis may, at any time after it submits such a notice of Permitted Delay, either: (y) request in writing that the City approve an alternative access plan in accordance with Section 6.7(b), such that the Permitted Delay shall terminate upon Martin/Regis' submittal of the request or (z) terminate this Development Agreement by giving City written notice of such termination, and the provision of Section 10.4 shall not be applicable to such rights of termination. If, at any time following the Effective Date, CalTrans affirmatively disapproves, in writing, construction of any 4-way, signalized intersection at El Camino Real/Road A, Martin/Regis, in its sole discretion, may either: (1) request that City, in its reasonable discretion, approve an alternative access plan for Road A in accordance with Section 6.7(b); or (2) terminate this Development Agreement by giving City written notice of such termination, and the provision of Section 10.4 shall not be applicable to such rights of termination. Following termination pursuant to this Section 5.6, neither Martin /Regis nor any successor or assignee of Martin/Regis shall have any further rights or obligations hereunder (except for those obligations that, by their terms, survive termination).

5.7 Extension of Maps. To the extent allowed by the Subdivision Map Act (Government Code Sections 66410 *et seq.*), and unless otherwise specified in any of the Existing Approvals or any Future Approvals, the terms of any map relating to a subdivision of any part of the Property that is approved and filed prior to the termination of this Development Agreement, shall automatically be extended for the duration of this Development Agreement (including any authorized Extension).

5.8 Phasing of Flex Components. Martin/Regis acknowledges and agrees that the City's preference is to have office space uses developed on the portions of the Property designated as Office/Residential C Flex and Office/Residential D&E Flex. Martin/Regis further acknowledges and agrees that the Specific Plan amendment approved on December 11, 2001, which changed the land use designation of those portions of the Property from "Office" and "Parking Facility" to Office/Residential C Flex and Office/Residential D&E Flex, was approved in order to provide Martin/Regis with the flexibility to pursue residential development alternatives in the event the economics of the northern San Mateo County office space market fail to return to a normalized vacancy rate of 5% prior to January 1, 2004. In order to accommodate the City's preference that the Office/Residential C Flex and Office/Residential D&E Flex Project Components be developed for office space uses, while at the same time allowing for flexibility in the event the economics of the northern San Mateo County office space market fail to improve prior to January 1, 2004, the parties agree that (a) no grading or building permit for residential uses

on the Office/Residential C Flex Project Component shall be issued prior to the last to occur of (i) January 1, 2003, and (ii) the date on which construction and installation of all foundations for the Residential A&B Project Component has been completed; and (b) no grading or building permit for residential uses on the Office/Residential D&E Flex Project Component shall be issued prior to the last to occur of (i) January 1, 2004, and (ii) the date on which construction and installation of all foundations for the Residential A&B Project Component has been completed. Martin/Regis' right to pursue residential development alternatives on the Office/Residential C Flex and Office/Residential D&E Flex Project Components shall be further conditioned upon Martin/Regis having obtained planned development plan permits or conditional use permits, as applicable, for not less than 10,000 square feet (gross leaseable area) of nonresidential uses, such as office space (including space for nonprofits or residential leasing offices), child-care facilities, business centers, galleries, or retail space located within the Residential A&B, Office/Residential C Flex and/or Office/Residential D&E Flex Project Components. Retail and/or restaurant uses located within or adjacent to the Hotel shall not be counted for purposes of determining compliance with the foregoing nonresidential space requirement. At any time after the Effective Date, the City Manager may, in his/her sole, absolute discretion (and without any obligation to do so), waive, in writing, the foregoing restrictions applicable to development of residential uses on either or both the Office/Residential C Flex and Office/Residential D&E Flex Project Components.

6. Use of the Property and Applicable Law.

6.1 Permitted Uses. The permitted uses of the Property, the density or intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, and requirements for infrastructure and public improvements shall be governed by the provisions of this Development Agreement, the Existing Approvals and the Applicable Law.

6.2 Project Development. Martin/Regis agrees to develop the Project in accordance with the Existing Approvals, the Applicable Law and the terms and conditions of this Development Agreement. In the event of an express conflict between this Development Agreement and the Existing Approvals, this Development Agreement shall control. Except as expressly provided in Section 12.1 hereof, Martin/Regis shall have no liability if the contemplated development of the Project fails to occur.

6.3 Fees.

(a) Processing and Consultant Fees. City may charge and Martin/Regis shall pay when due any and all processing fees, including application and inspection and monitoring fees, for land use approvals, grading and building permits and other permits and

entitlements (each, a "Processing Fee"), which are in force and effect on a city-wide basis (except as limited by other development agreements or other vesting mechanisms) as of the Effective Date, except for Architectural Review Fees as provided in Section 6.3(b). The amount of each such Processing Fee shall be equal to the lesser of (1) the Processing Fee in effect at the time those permits, approvals or entitlements are applied for with respect to any or all portions of the Project and (2) the Processing Fee in effect as of the Effective Date, increased by the percentage increase in the Consumer Price Index measured from the measuring month three (3) months preceding the Effective Date to the measuring month three (3) months preceding the date such Processing Fee is due. In no event shall a Processing Fee be reduced, by operation of the Consumer Price Index adjustment, below the amount of the Processing Fee in effect as of the Effective Date. As used herein, the term "Consumer Price Index" shall mean the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index, All Urban Consumer, All Items, San Francisco-Oakland-San Jose, California (1982-1984 equals 100), or the successor of such index. Except as otherwise mutually agreed by both parties, no Processing Fees other than those identified in the City of San Bruno Master Fee Schedule in effect as of the Effective Date shall be imposed by the City upon the Project or the Property.

In addition to charging the foregoing Processing Fees, City may, in its sole discretion, contract with one or more outside inspectors, engineers or consultants to perform all or any portion of the monitoring, inspection, testing and evaluation services to be performed in connection with construction and development of the Project. Martin/Regis shall pay to City, within 10 days following City's written demand therefor, the full amount of all costs and fees charged by such outside inspectors, engineers and consultants, plus a four percent (4%) City administration charge. The costs and fees of the outside inspectors, engineers and consultants, together with the associated administrative charge payable by Martin/Regis, shall be in addition to, and not in lieu of, the Processing Fees; provided, however, City agrees not to double-charge Martin/Regis (through the imposition of both a Processing Fee and a consultant charge) for any individual monitoring, inspection, testing or evaluation service. In addition, City agrees to limit its use of outside inspectors, engineers and consultants to those reasonably necessary or desirable, as determined by the City Manager or his/her designee in his/her reasonable discretion, to accomplish the requisite monitoring, inspection, testing and evaluation services.

- (b) Architectural Review Fees. City may engage one or more outside architectural firms to review and evaluate (but not to substantially redesign) Martin/Regis' architectural plans and drawings for the

Project, to ensure that the Project complies with the approved architectural guidelines, and to advise the City and its Architectural Review Committee in connection with Project design review. City shall cooperate with Martin/Regis in establishing a scope of work and budget(s) for said architectural firm(s). City agrees that the scope of work to be undertaken by the firm(s) shall be reasonable in light of the size, type and complexity of the Project. Martin/Regis shall pay to City, within 10 days following City's written demand therefor, the full amount of all costs and fees charged by such outside architects. In addition, at the time Martin/Regis submits the architectural review application for each of the Project Components, Martin/Regis shall pay to City the sum of Five Thousand Dollars (\$5,000) per Project Component application to cover the City's costs of processing each such application and administering the outside architect contract(s).

- (c) Development Impact Fee. In addition to Martin/Regis' obligations with respect to the construction of, and payment of the costs of, certain on-site and off-site public improvement costs as set forth herein and in the Existing Approvals, Martin/Regis shall pay to City a development impact fee of ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000) (the "Development Impact Fee"). The parties agree that the Development Impact Fee is reasonably necessary to mitigate all environmental and other impacts of the Project on the City's facilities, services and municipal programs (including the City's fire protection, sewer, library and north area-wide traffic improvement programs, and the City's park dedication program) that will not otherwise be mitigated through Martin/Regis' performance of its other obligations set forth herein and in the Existing Approvals. The Development Impact Fee shall be allocated among each of the Project Components as follows:

(1) Senior Housing	\$240,000 (20%)
(2) Hotel	\$300,000 (25%)
(3) Residential A&B	\$180,000 (15%)
(4) Office/Residential C Flex	\$180,000 (15%)
(5) Office/Residential D&E Flex	<u>\$300,000</u> (25%)
Total	\$1,200,000 (100%)

The portion of the Development Impact Fee allocable to each of the Project Components shall be paid by Martin/Regis to City prior to the issuance of the first building permit for the applicable Project Component.

As a material part of the consideration for this Development Agreement, Martin/Regis has received the assurances of City that Martin/Regis shall not be subject to future exactions established by

City after the Effective Date that otherwise might be imposed on a discretionary basis as conditions to granting City Future Approvals. Therefore, this Development Agreement (including, without limitation, the Existing Approvals and Future Approvals) fully sets forth all of Martin/Regis' obligations to City pertaining to the Project and Martin/Regis' performance of its obligations under this Agreement shall fully satisfy all present and future requirements for development fees and exactions that could be required by City for the Project, and City shall not require from Martin/Regis any additional development fees and exactions in granting City Future Approvals. Notwithstanding the foregoing, any variation, modification, change or amendment to the Project, the Existing Approvals, the Future Approvals or this Development Agreement that under Section 10.1 hereof is determined to be a Major Amendment or otherwise inconsistent with this Development Agreement shall entitle City to impose new and/or increased development fees and exactions on the remaining Project, but only on the portion of the Project that is the subject of the Major Amendment or is otherwise inconsistent with this Development Agreement and only to the extent that the variation, modification, change or amendment increases the Project's impact on public facilities and services.

- (d) Park Dedication Requirements. Martin/Regis shall provide seventy-five (75) square feet of Open Space per multi-family residential unit (including, without limitation, any independent senior housing units, but excluding any senior assisted living units) to be developed on the Property and pay the in lieu fee as required by Section 6.3(c). "Open Space" is defined as all park and recreational facilities on the Property, whether public or private that meet the requirements of this Section 6.3(d). Open Space includes both: (1) Passive Open Space and (2) Improved Recreational Facilities. "Passive Open Space" includes outdoor landscaped park-like quiet areas that are reasonably adapted for use for park and recreational purposes taking into consideration such factors as size, shape, topography, geography, access, and location. "Improved Recreation Facilities" (whether in or outdoors) include the following: gym and fitness centers, swimming pools, turf playing fields, game courts, jungle gyms, tot-lots with child apparatus, and such other improved park and recreational facilities as are approved by the City's Recreation Services Director in his/her reasonable discretion. Recreational facilities located within or on the Hotel Project Component and for the exclusive use of the hotel guests shall not be deemed to fulfill the Open Space requirements of this Section 6.3(d). At a minimum, Martin/Regis shall provide (i) not less than one (1) acre of Passive Open Space and at least one tot-lot with child apparatus and (ii) an indoor swimming pool/ recreation center. Upon Martin/Regis' written request, the City Council may opt to include as Improved

Recreational Facilities all or a portion of those childcare facilities developed on the Property, provided Martin/Regis guarantees to the reasonable satisfaction of the City that the residents of the residential portions of the Project will have continued access to and use of said childcare facilities, and further provided the City Council finds in its sole, discretion, that it is in the public interest to count said childcare facilities toward Martin/Regis' Open Space obligations. Improved Recreational Facilities shall be calculated against the total Open Space area requirement at a 5:1 ratio, e.g., one (1) square foot of a fitness center or swimming pool equals five (5) square feet of Passive Open Space. "Open Space" does not include yards, court areas that are not reasonably adapted for use for park and recreational purposes, or setbacks and other open areas required to be maintained by the zoning and building ordinances. For any privately-owned Open Space, Martin/Regis shall require the following: (1) that private ownership and maintenance of the open space is adequately provided by recorded written agreement, conveyance or restrictions; and (2) that the use of the private open space is restricted for park and recreational purposes by recorded covenant, which runs with the land in favor of the future owners of the property and cannot be defeated or eliminated without the consent of the City. Such recorded agreements and covenants shall include an enforcement mechanism in favor of City and shall otherwise be in forms acceptable to the City Attorney in his/her reasonable discretion. Compliance with this Section 6.3(d) satisfies all requirements of Section 12.44.140 (Dedication of Land for Park and Recreational Purposes) of the San Bruno Municipal Code.

- (e) Other Agency Fees. Nothing in this Development Agreement shall limit the right of any other local, regional, state or federal agency or district to impose otherwise lawful fees on the Project, including non-City fees imposed by such agencies or districts and collected by City solely for the benefit of such agencies or districts, unless such fees are levied only with the exclusive approval of the City.

6.4 Applicable Rules, Regulations and Policies. Martin/Regis is hereby vested with the right to develop the Property subject to the following and all other provisions of this Development Agreement including, without limitation, the Existing Approvals and Future Approvals:

- (a) Consistency of Future Approvals with Applicable Law. To the extent it has full authority to do so, City agrees to grant and implement the necessary land use, zoning, site plan or subdivision approvals and to grant all other approvals and permits, including any ministerial approvals, which will accomplish development of the Project for the uses and to the density or intensity of development described and shown in (1) the Existing Approvals, and (2) the rules, ordinances, regulations and official policies in

effect on the Effective Date (the "Applicable Law"). Applicable Law shall include, without limitation, the City's General Plan, the Specific Plan, and City ordinances and resolutions pertaining to, for example, but not by way of limitation, permitted uses, building locations, timing of construction, densities, design, heights, infrastructure, parks and recreation. If any existing provisions of the Applicable Law are in conflict with the provisions of this Development Agreement, the provisions of this Development Agreement shall prevail. For purposes of this provision, and similar provisions of this Development Agreement, a conflict must be material and shall not be deemed to exist with respect to rules, ordinances, regulations or official policies which are of a kind or application similar to those which are permitted to be made applicable to the Project by the provisions of this Development Agreement, including but not limited to the provisions of this Section 6.4. By way of illustrating the application of the foregoing, the Specific Plan is by its nature general and diagrammatic in many respects. At a more specific level of detail of development, it may be found to inadvertently conflict with existing codes and specifications of City applicable to that level of detail. Therefore, Resolution No. 2001-82, approving the Specific Plan amendment recognized this potential conflict and requires Martin/Regis to either comply with such applicable codes and specifications or seek City approval of variances or exceptions therefrom. It is not the intent of this Section 6.4(a) or similar provisions of this Development Agreement to preclude City's application of existing codes and specifications under such circumstances where the conflict, to the extent it exists, results from refinement of the Project to a more specific level of detail from a more general level previously approved. (Examples: (i) Streets or sidewalks may be shown on the Specific Plan at a certain width, but City specifications may require a greater width. City specifications shall control unless City grants a variance or exception. (ii) Similarly, infrastructure locations may require change at the engineering design level to comply with site conditions or City specifications. Those kinds of changes shall apply to the Project even though some density or buildable area shown on the Specific Plan may be affected. (iii) In contrast, a City code provision imposing a greater park dedication requirement or an overall lesser density for a parcel than that specified in the Specific Plan would not apply.)

- (b) Applicable Building and Construction Standards. All building and construction standards, including but not limited to the Uniform Building Code, Uniform Plumbing Code, Uniform Swimming Pool Code, Uniform Electrical Code and Uniform Mechanical Code, applicable to the Property, whether as to existing or future structures, are not subject to this Development Agreement and Martin/Regis shall develop the Project in accordance with such codes as applicable from time to time including, in addition, codes,

ordinances, policies, rules or regulations enacted or adopted from time to time to protect persons or property from health and safety perils; provided, however, upon Martin/Regis' written request therefor, City shall waive any future changes in building and construction standards that City determines in its reasonable discretion are not necessary or desirable to protect persons and property from health and safety perils. Martin/Regis shall maintain existing buildings on the Property so as not to create hazards to persons or property or create nuisance or security problems, as reasonably determined by City from time to time or as required by other public bodies, which have jurisdiction from time to time.

- (c) Participation in Public Facility Financing and Construction Programs. Martin/Regis will participate in all presently adopted and future public facility financing or construction programs that City may adopt, consistent with the Specific Plan, which include the Property within an area of benefit; provided that, to the extent not inconsistent with the Existing Approvals, Martin/Regis reserves all rights under applicable law to protest the formation or allocation of costs under any such financing program. Martin/Regis understands and agrees, however, that the failure to provide infrastructure and public improvements required for the Project under the Existing Approvals and pursuant to this Development Agreement may delay Martin/Regis' ability to proceed with the Project, may jeopardize Martin/Regis' rights under this Development Agreement and may give rise to or cause a default by Martin/Regis under Section 12.1 hereof.
- (d) Compliance with Federal and State Requirements. Martin/Regis, at its sole cost and expense, shall comply with requirements of, and obtain (or, in the case of the signalized intersection at El Camino Real/Road A, cooperate with City to obtain) all permits and approvals required by, regional, State and Federal agencies having jurisdiction over the Project, including but not limited to Other Agency Future Approvals.
- (e) Changes in City Laws. This Development Agreement shall not preclude the application to the development of the Property of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in State or Federal laws or regulations as provided in Government Code Section 65869.5. In the event State or Federal laws or regulations enacted after the Effective Date of this Development Agreement or action by any other governmental agency other than City prevent or preclude compliance with one or more provisions of this Development Agreement, or require changes in plans, maps or permits approved by City, this Development Agreement shall be modified, extended or suspended as may be necessary to comply

with such State or Federal laws or regulations or the regulations of such other governmental agency. Immediately after enactment of any such new law or regulation, the parties shall meet and confer in good faith to determine the necessity of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Development Agreement. 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 such modification or suspension is infeasible in Martin/Regis' reasonable business judgment, then Martin/Regis shall have the right, at its sole election, to either: (1) submit the issue of whether City has acted in an arbitrary or capricious manner under this paragraph to arbitration pursuant to Section 12.3 or (2) to terminate this Development Agreement by written notice to City, subject to the provisions of Section 10.8 hereof.

In addition, Martin/Regis shall have the right, at its sole cost and expense and at no cost to City, to challenge the new law or regulation preventing compliance with the terms of this Development Agreement, and in the event such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect and any related delay caused by the successful litigation challenge shall be deemed a Permitted Delay. In the event that Martin/Regis so challenges the new laws or regulations, City reserves the right to take any position in such Martin/Regis challenge, even if contrary to Martin/Regis, in order to protect City's lawful authority or jurisdiction or financial interests.

To the extent that any actions of Federal or State agencies (or actions of other governmental agencies, including City, required by Federal or State agencies or actions of City taken in good faith in order to prevent adverse impacts upon City by actions of Federal, State or other governmental agencies) have the effect of preventing, delaying or modifying development of the Project or any portion thereof, neither Martin/Regis nor City shall in any manner be liable for any such prevention, delay or modification of said development. Such actions include, but are not limited to, flood plain or wetlands designations and actions of City or other governmental agencies as a result thereof and the imposition of air quality or transportation measures or sanctions and actions of City or other governmental agencies as a result thereof. As a condition to being able to proceed with development, Martin/Regis may be required, at its cost and, subject to the rights of Martin/Regis in the foregoing paragraph of this Section 6.4(e), without cost to or obligation on the part of City, to participate in such regional or local programs and to be subject to such development restrictions

as may be necessary or appropriate by reason of such actions of Federal, State or other governmental agencies (or action of City taken in order to prevent adverse impacts upon City by actions of Federal, State or other governmental agencies). Any such actions described in this paragraph, which prevent or delay development of the Project shall constitute a Permitted Delay (as defined in Section 10.4 hereof). The imposition of taxes, fees or other charges or costs by State, Federal or County agencies, which add to the cost of developing the Project but which do not otherwise prevent, delay or modify the Project shall not be deemed actions which prevent, delay or modify development of the Project for purposes of the foregoing provisions of this paragraph and shall not constitute a Permitted Delay.

- (f) City's Police Power. Nothing in this Development Agreement shall be construed to limit the authority of City in the exercise of its police power or pursuant to Federal, State or regional or other agency mandate to adopt and apply to Martin/Regis and the development of the Project codes, ordinances, policies, rules and regulations that have the legal effect of protecting persons or property from conditions which create a threat to health, safety or physical risk.
- (g) Project Standards. Unless expressly provided in this Development Agreement, the rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to the Project, including but not limited to, all public improvements, shall be those in force and effect at the time of the applicable permit approval, to the extent not in conflict with the provisions of this Development Agreement. For purposes of this subsection (g), the determination of a conflict shall be governed by the same principles set forth in subsection (a) of this Section 6.4.

6.5 Intentionally Omitted.

6.6 Development Timing and Restrictions.

- (a) The parties acknowledge that Martin/Regis cannot at this time predict with certainty when or the rate at which phases of the Property would be developed. Such decisions depend upon numerous factors which are not all within the control of Martin/Regis, such as market orientation and demand, interest rates, competition and other factors. Because 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 provide for the timing of development resulted in a later adopted initiative restricting the timing of development controlling the parties' agreement, it is the intent of City and Martin/Regis to hereby acknowledge and provide for the right of Martin/Regis to

develop the Project in such order and at such rate and times as Martin/Regis deems appropriate within the exercise of its sole and subjective business judgment, subject to the terms, requirements and conditions of the Existing Approvals and this Development Agreement (including without limitation infrastructure phasing requirements and the provisions of Section 6.4, above). City acknowledges that such a right is consistent with the intent, purpose and understanding of the parties to this Development Agreement, and that without such a right, Martin/Regis' development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute, (California Government Code Section 65864 *et seq.*), City Council Resolution 1986-77 and this Development Agreement. Martin/Regis will use its best efforts, in accordance with its own business judgment and taking into consideration market conditions and other economic factors influencing Martin/Regis' business decision, to commence or to continue development, and to develop the Project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Development Agreement and with the Existing Approvals.

6.7 Infrastructure Improvements.

- (a) Onsite Infrastructure Improvements. Except as otherwise expressly provided herein, Martin/Regis shall, at its expense, construct and install all onsite infrastructure improvements in accordance with the requirements of the Specific Plan, the Existing Approvals and the Future Approvals.
- (b) Offsite Infrastructure Improvements Required by City. The construction and installation of a traffic signal (including opticon devices) at Sneath Lane and Commodore Avenue and a signalized 4-way intersection (or alternative intersection plan) at El Camino Real and Road A shall be required as follows:
 - (i) Sneath/Commodore. City shall use good faith, diligent efforts to cause the Sneath/Commodore traffic signal improvements to be constructed and installed on or before September 30, 2002. Martin/Regis shall pay to City, in two installments, one hundred percent (100%) of the costs and expenses incurred by City in connection with the construction and installation of the Sneath/Commodore traffic signal, not to exceed One Hundred Seventy-Five Thousand Dollars (\$175,000). The first installment shall be in the amount of \$88,000 and shall be paid by Martin/Regis within 10 days after City's demand therefor, which demand may be made at any time following commencement of construction of the signal. The second installment shall be for the balance of the total costs and expenses incurred in connection with the construction and installation of the signal, up to a maximum of \$87,000, and

shall be paid by Martin/Regis within 10 days after City's demand therefor, which may be made at any time following completion of construction of the Sneath/Commodore traffic signal.

(ii) El Camino Real/Road A. As provided in Section 5.6, the City shall utilize good faith, diligent efforts to obtain CalTrans' approval of, and to commence construction and installation of, a 4-way signalized traffic intersection at El Camino Real/Road A as contemplated by the Specific Plan on or before March 30, 2003. Provided CalTrans approves a 4-way signalized traffic intersection at El Camino Real/ Road A, Martin/Regis shall pay to City, in four installments, fifty percent (50%) of the total costs and expenses incurred in connection with the construction and installation of said signalized intersection, including any required widening or capacity improvement of the I-380 off ramp to El Camino Real, up to a maximum of One Million Dollars (\$1,000,000). The first installment shall be in the amount of \$500,000 and shall be paid by Martin/Regis within 10 days after City's demand therefor, which demand may be made at any time following commencement of construction of the signalized intersection. Martin/ Regis shall pay the remainder in three additional installments as follows: the second installment shall be the City's reasonable estimate of Martin/ Regis' remaining share of total costs, not to exceed One Hundred Sixty-Seven Thousand Dollars (\$167,000) payable one year following the date of the City's written demand for the first installment; the third installment shall be the City's reasonable estimate of Martin/Regis' remaining share of total costs, not to exceed One Hundred Sixty-Seven Thousand Dollars (\$167,000) payable two years following the date of the City's written demand for the first installment; and the fourth and final installment shall be the remainder of Martin/Regis' total costs, not to exceed One Hundred Sixty-Six Thousand Dollars (\$166,000) payable three years following the date of the City's written demand for the first installment.

If CalTrans affirmatively disapproves the proposed 4-way El Camino Real/Road A signalized intersection, and provided Martin/Regis has not terminated this Development Agreement as provided in Section 5.6, then Martin/Regis shall, at its expense, prepare an alternative intersection and traffic signal plan utilizing the existing curb cuts on El Camino Real or any other curb cuts or rights-of-way obtained by Martin/Regis on El Camino Real. Martin/Regis shall obtain all requisite City, State and other governmental agency approvals thereof, including City's approval of a plan for financing the construction and installation of the alternative El Camino Real/Road A intersection and traffic signal (as shown on the alternative plans), which approval shall not be unreasonably withheld or delayed, but may be conditioned on Martin/Regis' written agreement to pay, in lieu of its pro rata share

of the costs of the 4-way El Camino Real/Road A signalized intersection as set forth in the preceding paragraph, all costs to be incurred in connection with the construction and installation of the alternative El Camino Real/Road A intersection and traffic signal (as shown on the alternative plans).

(c) No Other Off-Site City Infrastructure Improvements. Martin/Regis shall not be required to fund or construct any additional off-site City infrastructure improvements, except as may be required in connection with an amendment as described in Section 10.1 of this Agreement.

(d) Offsite Infrastructure Improvements Required by Other Agencies. Martin/Regis shall construct and install, at its expense, any and all off-site infrastructure improvements required by any State, Federal or local governmental agencies (other than City) in connection with the development of the Project.

6.8 Affordable Housing Plan for Project. Martin/Regis' rights under the Existing Approvals and this Development Agreement shall be conditioned upon Martin/Regis' compliance with the provisions of the Affordable Housing Plan for the Project attached hereto as Exhibit E ("Affordable Housing Plan"). The City shall waive (or seek reimbursement from the San Bruno Redevelopment Agency for) all Processing Fees as defined by Section 6.3(a) allocable to the affordable housing units developed on the Property in accordance with the Affordable Housing Plan.

6.9 Prevailing Wage Policy. In accordance with Resolution No. 2001-5, Martin/Regis shall comply with the City of San Bruno Prevailing Wage Policy.

7. Subsequently Enacted Rules and Regulations; Initiatives.

7.1 Subsequently Enacted Rules and Regulations. The City may, hereafter, during the term of this Development Agreement apply such newer City enacted or modified ordinances, rules, regulations and official policies adopted on a city-wide basis (except as limited by other development agreements or other vesting mechanisms) which are not in conflict with the terms of this Development Agreement. To the extent any changes in the General Plan, the zoning codes or other rules, ordinances, regulations or official policies (whether adopted by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the City Council, Planning Commission or any other Board, Commission or Department of City or any designated officer or employee thereof, or by the electorate) are in conflict with the terms of this Development Agreement, the terms of this Development Agreement shall prevail. For purposes of this Section 7.1,

the determination of a conflict shall be governed by the same principles set forth in subsection (a) of Section 6.4.

7.2 Initiatives. Martin/Regis recognizes the risk that an initiative measure might invalidate or prevail over this Development Agreement and assumes such risk. Should an initiative measure or measures be enacted which would preclude construction of all or any substantial part of the Project, and should such measure be determined by a court of competent jurisdiction to invalidate or prevail over all or any part of this Development Agreement, Martin/Regis shall have no recourse against City for any damages Martin/Regis might sustain as a result thereof. In the event such court action is initiated, then City and Martin/Regis shall meet and confer in good faith to determine whether to: (1) challenge the initiative pursuant to Section 9.1; (2) modify the Project and the Agreement pursuant to Section 10 in a manner which would, to the extent feasible, achieve the mutual goals and objectives of the parties hereto; or (3) terminate this Development Agreement pursuant Section 10.1. In the event that the City and Martin/Regis cannot reach mutual agreement within a reasonable time to preserve the right to legal challenge, Martin/Regis may, at its own expense, institute and maintain such a legal challenge.

7.3 City's Rights Under Government Code Section 65870 et seq. Nothing herein shall preclude City from acting pursuant to Government Code Section 65870 et seq., in furtherance of implementing the Existing Approvals, subject to the approval of Martin/Regis in its reasonable determination as to whether such City action is in conflict with the provisions of this Development Agreement and subject to the rights of City to submit the reasonableness of any such determination by Martin/Regis to arbitration pursuant to Section 12.3.

8. Intentionally Omitted.

9. Obligations of the Parties.

9.1 Cooperation in the Event of Third-Party Legal Challenge. In the event any legal or equitable action or proceeding is instituted by a third party challenging the validity of any provision of this Agreement or the procedures leading to its initial adoption or the initial issuance of any of the Existing Approvals, Martin/Regis reserves the right to withdraw its application for the Project. If Martin/Regis elects not to withdraw its application, the City and Martin/Regis shall cooperate in defending such action, and Martin/Regis agrees to diligently defend any such action or proceeding and to bear the litigation expenses of defense, including attorneys' fees, as provided in Section 14.3. Martin/Regis further agrees to indemnify and hold City harmless from and against any and all claims for recovery of the third party's litigation expenses, including attorney's fees.

9.2 Martin/Regis. In addition to the other obligations of Martin/Regis set forth herein and under the Existing Approvals, Martin/Regis shall have the following obligations:

- (a) Development of the Property. In consideration of City entering into this Development Agreement, Martin/Regis has agreed that Martin/Regis' development of the Property shall be in conformance with all of the terms, covenants and requirements of this Development Agreement and the Existing Approvals and Other Agency Future Approvals, and Martin/Regis shall perform those specific obligations and provide those specific contributions identified in the conditions of approval and exhibits to the Existing Approvals and Other Agency Future Approvals. Martin/Regis and its successors and assigns, as applicable, shall pay when due any and all fees, charges and other costs, including mitigation impact fees and costs, which are imposed pursuant to this Development Agreement or are otherwise lawfully imposed on all or any portion of the Project, whether imposed by City or other agencies.
- (b) Financing Mechanisms. Martin/Regis shall propose and agree to participate in, at its sole cost and expense, all Financing Mechanisms required to develop and/or maintain, repair and restore the Project in accordance with the Existing Approvals, any Future Approvals and the terms, requirements and conditions of this Development Agreement. In proposing a particular Financing Mechanism to City, Martin/Regis must demonstrate to the satisfaction of City in its sole and absolute discretion that funding of the capital improvements and/or maintenance requirements are economically sound and feasible and meet City's legal, policy and underwriting criteria. Subject to meeting such criteria, City acknowledges that Mello-Roos special tax districts and assessment districts are acceptable Financing Mechanisms.
- (c) Homeowners and Lessors' Airport Disclosure. Martin/Regis shall take all actions and shall make all required real estate sale and lease disclosures necessary to comply with the provisions of Ordinance No. 1646 regarding adverse noise impacts from San Francisco International Airport aircraft overflights.
- (d) Property Owners and Homeowners' Associations. Martin/Regis shall cause a property owners' association and homeowners' association(s) to be established and for covenants, conditions and restrictions ("CC&R's") to be approved by City and recorded for the entire Property as a condition precedent to approval and recordation of the first final map for the Property or any portion thereof. The CC&R's shall contain, to the satisfaction of City in its sole and absolute discretion, enforceable provisions to finance and govern, among other matters, architectural design of the Project,

front-yard and exterior maintenance, use restrictions, and (to the extent not provided by other Financing Mechanisms) the provisions for and on-going funding of costs of operation, maintenance, repair and replacement of private open space, and private landscaping areas, and other provisions required by the Existing Approvals. Martin/Regis shall cause to be placed in any CC&R's applicable to the Property or any portion thereof express provisions for City, at its sole election and acting either separately or jointly with others, to enforce the provisions of this Development Agreement or the CC&R's and to recover attorneys' fees and costs for such enforcement from the party in violation thereof.

- (e) Park and Recreational Responsibilities. Martin/Regis shall provide park and recreational facilities in accordance with the Specific Plan and Existing Approvals and Section 6.3(d) hereof.
- (f) Public Art Responsibilities. Martin/Regis shall install, at its sole expense of a minimum of One Hundred Thousand Dollars (\$100,000), at least two significant art installations (which shall not include signs or landscape plantings) at separate locations on the Property. The design of the art installations and the location thereof shall be consistent with the architectural and design guidelines in the Specific Plan and subject to review by the City's Architectural Review Committee and approval by the City Council, which may be granted or denied in its reasonable discretion.
- (g) Pedestrian Bridge. In designing and developing the Project, Martin/Regis shall take reasonable steps to accommodate the future proposed pedestrian bridge as contemplated by the Specific Plan. Martin/Regis acknowledges and agrees that there are no definitive plans for the pedestrian bridge and that City shall have no obligation to pursue the development of said bridge. If City elects, in its sole discretion, to pursue the development of the pedestrian bridge, Martin/Regis shall cooperate in good faith with City in its development efforts. Martin/Regis' obligation to cooperate in good faith shall include the obligation to grant to City or its designee, at no cost to City or its designee, such perpetual easements as are reasonably necessary or desirable to effect the installation, maintenance, repair and replacement of the pedestrian bridge (including easements for pedestrian ingress and egress). Except as otherwise expressly provided in this section, Martin/Regis shall have no obligation to pay any costs or expenses in connection with the development and construction of any such pedestrian bridge. City agrees that the pedestrian bridge shall not materially, adversely interfere with the overall development of the Project or any of the Project Components and that development of the pedestrian bridge shall be consistent with the architectural and design guidelines of the Specific Plan.

- (h) Salvage and Recycling Plan. Prior to demolishing any existing structures or improvements on the Property, Martin/Regis shall prepare and submit a demolition salvage and recycling plan for approval by the City, which approval shall not be unreasonably withheld or delayed.
- (i) Tree Retention Plan. Prior to removing any existing trees on the Property of over twenty-four (24) inches in diameter, as measured 4 and 1/2 feet above the adjacent existing grade, Martin/Regis shall prepare and submit a tree retention plan related to the "heritage" trees identified in the Specific Plan for approval by the City, which approval shall not be unreasonably withheld or delayed. The Tree Retention Plan shall insure that all trees planted to replace the heritage trees are 24-inch box size or larger.
- (j) Master Signage Program. Prior to or concurrent with Martin/Regis' submittal of the first planned unit development, conditional use or other discretionary permit application for any of the Project Components, Martin/Regis shall prepare and submit a master signage program for approval by the City, which approval shall not be unreasonably withheld or delayed.
- (k) Sale Tax Point of Sale Designation. Martin/Regis shall use diligent, good faith efforts to require all persons and entities providing construction and building materials, including pre-fabricated building components, to be used in connection with the construction and development of, or incorporated into, the Project, to designate the City of San Bruno as the sole point of sale for purposes of computing sales taxes due (under the Bradley/Burns Uniform Sales Tax Law and implementing regulations) on the sale of such construction and building materials and components.
- (l) Bicycle Plan. Prior to or concurrent with Martin/Regis' submittal, its Master Tentative Map application, Martin/Regis shall prepare and submit a bicycle plan (including proposed locations of bike lanes/routes) for approval by the City, which approval shall not be unreasonably withheld or delayed.
- (m) Transit Facility Plan. Prior to or concurrent with Martin/Regis' submittal of its Master Tentative Map application, Martin/Regis shall prepare and submit a transit facility plan (including proposed locations of bus shelters) for approval by the City, which approval shall not be unreasonably withheld or delayed.
- (n) Well Site. At the City's written request, Martin/Regis shall accommodate a well water pumping station ("Well Site") on the Property in proximity to the I-380 corridor. Martin/Regis acknowledges and agrees that there is no definitive plan for the Well Site and that City shall have no obligation to pursue the

development of the Well Site. If City elects, in its sole discretion, to pursue the development of the Well Site, Martin/Regis shall cooperate in good faith with City in its development efforts, but shall have the right to approve the final location of the Well Site, which approval shall not be unreasonably withheld, conditioned or delayed. Martin/Regis' obligation to cooperate in good faith shall include the obligation to grant to City or its designee, at no cost to City or its designee, fee title to (or, at City's option, perpetual easements on, over and across) such real property as is reasonably necessary or desirable to effect the construction, installation, maintenance, repair and replacement of the Well Site (including temporary construction easements and perpetual easements for ingress and egress). Except as otherwise expressly provided in this section, Martin/Regis shall have no obligation to pay any costs or expenses in connection with the development, construction, or maintenance of any such Well Site. The City agrees that the Well Site shall not materially, adversely interfere with the overall development of the Property or any of the Project Components and that development of the Well Site shall be consistent with the architectural and design guidelines of the Specific Plan or CC&R's.

- (o) Cable Television Access. Martin/Regis shall accommodate wire connections for access to the City of San Bruno's municipal cable television channel within the Hotel, Residential and Senior Components of the Project ("Cable Access"). Martin/Regis acknowledges and agrees that there is no definitive plan for the location of the Cable Access. If Cable Access is to be installed, Martin/Regis shall cooperate in good faith with City in its efforts, but shall have the right to approve the final location of the Cable Access, which approval shall not be unreasonably withheld, conditioned or delayed. Martin/Regis' obligation to cooperate in good faith shall include the obligation to grant to City or its designee, at no cost to City or its designee, the rights reasonably necessary or desirable to effect the construction, installation, maintenance, repair and replacement of the Cable Access. Costs of installing the wiring system within each building that allows for future Cable Access shall be borne by Martin/Regis. Except as otherwise expressly provided in this section, Martin/Regis shall have no obligation to pay any costs, expenses, or fees in connection with the installation, construction, or maintenance of any such Cable Access. The City agrees that the Cable Access shall not materially, adversely interfere with the overall development of the Property or any of the Project Components and shall be consistent with the architectural and design guidelines of the Specific Plan or CC&R's.

- 9.3 City. In addition to the other obligations of City set forth herein, City shall have the following obligations:

- (a) City's Good Faith in Proceedings. In consideration of Martin/Regis entering into this Development Agreement, and provided that Martin/Regis exercises due diligence, good faith and files full, accurate and complete applications with timely payment of all fees therefor, City agrees that it will accept, process and review, in good faith and in a timely manner, all applications for City Future Approvals related to the Project filed by Martin/Regis or other owners of property within the Project or those with rights to acquire any such property, in accordance with the terms of this Development Agreement. City agrees that the scope of its review of remaining or supplementary applications for development approvals shall be exercised consistent with the terms of this Development Agreement.
- (b) Additional Approvals. City shall cooperate with Martin/Regis, at Martin/Regis' cost and expense, in Martin/Regis' endeavors to obtain any other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as set forth in Section 14.2.
- (c) Acceptance of Public Roads. City shall accept ownership of the public roads identified in the Existing Approvals; provided, however, City shall not bear costs for maintenance, repair or replacement of associated medians and public landscaping areas and Martin/Regis shall establish Funding Mechanisms for such purposes as provided in Section 9.2 (b) hereof.
- (d) Reimbursements and Credits to Martin/Regis.
- (i) Reimbursements. The City shall use reasonable efforts, consistent with applicable law and procedures, to identify other property(ies) ("Additional Benefited Properties"), if any, that may be directly benefited by the Sneath/Commodore traffic signal paid for by Martin/Regis as provided in Section 6.7(b)(i). In the event City identifies such Additional Benefited Properties, City shall use reasonable efforts to cause to be reimbursed to Martin/Regis, through City, a portion of the costs incurred by Martin/Regis, based on a benefit formula approved by the City Council. Such benefit formula shall be based on ascertainable criteria, taking into account to the extent ascertainable, the proportionate benefit conferred on the Additional Benefited Properties. Consistent with applicable law and procedures, the City shall use reasonable efforts to collect and establish a mechanism for future collection of (irrespective of the term of this Development Agreement), any amounts reimbursable to Martin/Regis hereunder upon application to City by owners or developers of the Additional Benefited Properties for land use and development entitlements or building permits. Martin/Regis acknowledges and agrees that City's obligation is limited to reasonable efforts and is subject to

applicable laws and procedures as herein provided, and that Martin/Regis may not be reimbursed, in whole or in part, hereunder.

- (ii) Credits. In the event the City obtains or receives Other Funding (defined below), the City shall provide Martin/Regis a fee credit ("Credit") in an amount equal to forty percent (40%) of the amount of Other Funding (not to exceed the total amount of Processing, architectural review and Development Impact Fees paid or payable by Martin/Regis to City pursuant to subsections 6.3(a), (b) and (c) of this Development Agreement (collectively, "Fees")). For purposes of this Section 9.3(d)(ii), "Other Funding" shall mean grant funding directly related to the development of the Project, any Project Component, or any sub-component thereof, received by the City from any state or federal agency after the date of this Development Agreement, which grant funding the City is not required to repay (for example, the Metropolitan Transportation Commission's Transportation for Livable Communities Program provides planning grants, technical assistance and capital grants to help cities and nonprofit agencies develop transportation-related projects or other similar programs). Consistent with applicable law and procedures, within thirty (30) days of receipt of the Other Funding, if any, the City shall notify Martin/Regis in writing of the amount of the Credit. Until termination of this Development Agreement, any Credit apportioned to Martin/Regis under this Section 9.3(d)(ii) shall be applied by the City against Fees payable by Martin/Regis to City. If, on the date of termination of this Development Agreement there is a remaining Credit balance, then City shall pay the remaining Credit balance to Martin/Regis within thirty (30) days after Martin/Regis' written request therefor (which written request must be made no later than ninety (90) days following the effective date of termination); provided, however, the sum total of all Credit amounts applied by City against Fees payable by Martin/Regis, plus the remaining Credit balance, if any, to be disbursed by City to Martin/Regis upon termination of this Development Agreement, shall in no event exceed the total Fees paid or payable by Martin/Regis during the term of this Development Agreement. Martin/Regis acknowledges and agrees that City's obligations under this Section 9.3(d)(ii) are subject to applicable laws and procedures as herein provided.
- (e) Consideration of Eminent Domain. City agrees to cooperate with Martin/Regis in implementing all of the conditions of the Existing Approvals, including, without limitation, the consideration of the use of its eminent domain powers in connection with public rights-of-way and off-site public improvements; provided, however, the use of such eminent domain shall be in the sole and absolute

discretion of the City and subject to all applicable legal requirements.

- (f) Environmental Review. The parties acknowledge and agree that the Crossing EIR, including any subsequent or supplemental environmental impact report, is intended to be used in connection with each of the Existing Approvals and City Future Approvals needed for the Project. Consistent with CEQA policies and requirements applicable to the Crossing EIR, City agrees to use the Crossing EIR in connection with the processing of any of the City Future Approvals to the extent allowed by law and not to impose on the Project any mitigation measures or other conditions of approval other than those specifically imposed by the Existing Approvals and the Crossing EIR mitigation monitoring program or specifically required by Applicable Law.

10. Amendment.

- 10.1 Amendment By Mutual Written Consent. Except as otherwise expressly provided herein (including, without limitation, Section 11 relating to City's annual review and Section 12 relating to termination in the event of a breach), this Development Agreement may be terminated, modified or amended only by mutual written consent of the parties hereto or their successors-in-interest or assignees and in accordance with the provisions of Government Code Sections 65967, 65867.5 and 65868 and Resolution 1986-77.
- 10.2 Major Amendment. Any amendment to this Development Agreement which affects or relates to (a) the term of this Development Agreement (except for an extension of the term pursuant to Section 5.2 or Section 10.4); (b) permitted uses of the Property; (c) provisions for the reservation or dedication of land; (d) conditions, terms, restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of use of the Property or the maximum height or size of proposed buildings; or (f) monetary contributions by Martin/Regis, shall be deemed a "Major Amendment" and shall require giving of notice and a public hearing before the Planning Commission and City Council. Limited time extensions (not including extensions to the term) not exceeding one hundred eighty (180) days in the aggregate for all such extensions, for compliance with the terms and conditions set forth herein, may be granted or denied by the City Manager in his or her sole discretion. Any amendment which is not Major Amendment shall be deemed Minor Amendment subject to Section 10.3 below 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 City Manager or his or her delagee shall have the authority to determine if an amendment is a Major Amendment subject to this Section 10.2 or a Minor Amendment subject to Section 10.3 below. Martin/Regis shall have the right to appeal the City Manager's determination to the City Council.

- 10.3 Minor Amendment. The City Manager or his delagee shall have the authority to review and approve amendments to this Development Agreement requested by Martin/Regis provided that such amendments are not Major Amendments. Martin/Regis shall have the right to appeal such City Manager approvals to the City Council. City acknowledges that Martin/Regis is currently negotiating with an adjacent property owner, Dr. John Russo, to exchange a portion of the Property for a portion of the real property owned by Dr. Russo, his successors or assigns. In the event those negotiations are successful, within 30 days of a written request by Martin/Regis, City shall amend the legal description of this Development Agreement to accommodate such real property exchange. The parties agree that this amendment is non-discretionary and shall be deemed a Minor Amendment.
- 10.4 Permitted Delays. In the event of changed conditions, changes in local, State or Federal laws or regulations (other than changes expressly permitted by this Development Agreement), unusually severe weather, delays due to strikes, inability to obtain materials, delays caused by governmental agencies in issuing permits and approvals, civil commotion, fire, acts of God, war, lockouts, riots, floods, earthquakes, epidemic, quarantine, freight embargoes, unexpected or unanticipated soil conditions, interference with construction, the commencement of circulation of an initiative or referendum petition or the filing of any court action to set aside or modify this Development Agreement or the Existing Approvals or any of the Future Approvals, or other circumstances described in this Development Agreement as giving rise to a Permitted Delay and which substantially interfere with carrying out the Project, as the Project has been approved, or with the ability of either party to perform its obligations under this Development Agreement, then, except as to acts or conditions to which this Section 10.4 is expressly not applicable under other provisions of this Development Agreement and except as to acts or conditions caused by Martin/Regis, if and to the extent that any such cause referred to above in this Section 10.4 has the effect of delaying Martin/Regis' completion of any act required hereunder beyond a date specified for such act or beyond the term of this Development Agreement, then the time for such act to be completed or the term of this Development Agreement, whichever is applicable, shall be extended for such period of time as the permitted delay shall exist but in any event not longer than 360 days from the commencement of any such Permitted Delay and not longer than 720 days, in the aggregate, for all such Permitted Delays. Martin/Regis agrees that adverse changes in economic conditions, either of Martin/Regis specifically or the economy generally, changes in market conditions or demand, and/or Martin/Regis' inability to obtain financing or other lack of funding to complete the Project shall not constitute grounds of Permitted Delay pursuant to this Section 10.4. Martin/Regis expressly assumes the risk of such adverse economic market changes and/or inability to obtain financing whether or not foreseeable as of the Effective Date of this Development Agreement.

- 10.5 Requirement for Writing. No modification, amendment or other change to this Development Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing, which refers expressly to this Development Agreement and is signed by duly authorized representatives of both parties or their successors. The City Clerk shall record an appropriate notice of any Major Amendment, cancellation or termination with the San Mateo County Recorder not later than ten (10) days after the effective date of the action effecting such amendment, cancellation or termination, accompanied by a legal description of the Property. At the request of Martin/Regis, the City Clerk shall record an appropriate notice of any Minor Amendment with the San Mateo County Recorder not later than ten (10) days after the request accompanied by a legal description of the Property.
- 10.6 Amendments to Development Agreement Legislation. This Development Agreement has been entered into in reliance upon the provisions of this Development Agreement Legislation (California Government Code Section 65864 *et seq.*) as those provisions existed at the date of execution of this Development Agreement. No amendment or addition to those provisions which would materially affect the interpretation or enforceability of this Development Agreement shall be applicable to this Development Agreement unless such amendment or addition is specifically required by the California State Legislature, or is mandated by a court of competent jurisdiction. If such amendment or change is permissive (as opposed to mandatory), this Development Agreement shall not be affected by the same unless the parties mutually agree in writing to amend this Development Agreement to permit such applicability.
- 10.7 Amendment of the Existing Approvals. Notwithstanding any other provisions in this Development Agreement to the contrary, Martin/Regis may seek and City may review and grant in its sole discretion, in accordance with then applicable State and local laws, ordinances, regulations, rules and procedures, amendments or modifications to the Existing Approvals without seeking an amendment of this Development Agreement.
- 10.8 Effect of Termination on Martin/Regis' Obligations.
- (a) Continued Applicability of Existing Approvals. Notwithstanding any other provision hereof to the contrary, termination of this Development Agreement or termination of the rights of Martin/Regis hereunder as to the Property, or any part thereof, shall not affect any requirement to comply with the Specific Plan and the Existing Approvals and the terms and conditions of the applicable zoning, any precise plan approvals, any applicable permit(s), or any subdivision map or other land use entitlements, or any payments then due and owing to City, nor shall it affect the covenants of Martin/Regis specified in Section 10.8(b) below, to

continue after the termination of this Development Agreement. Martin/Regis understands and agrees that the Specific Plan or Existing Approvals may be substantially modified in light of the circumstances resulting from the termination of this Development Agreement or Martin/Regis' rights hereunder and Martin/Regis shall have no rights to challenge said modification by reason of this Development Agreement other than the rights, if any, Martin/Regis would have in the absence of this Development Agreement.

(b) Provisions Surviving Termination. Notwithstanding anything in this Development Agreement to the contrary, the following provisions of this Development Agreement shall survive and remain in effect following termination or cancellation of this Development Agreement for so long as necessary to give them full force and effect with respect to claims or rights of City arising prior to such termination or cancellation:

1. This Section 10.8 (Martin/Regis' obligations upon termination or cancellation);
2. Section 12.1 (remedies; limitation on damages and exceptions thereto; accrued obligations); and
3. Section 18.1 (Indemnification).

11. Annual Review.

11.1 Time of Review. As required by Resolution No. 1986-77, the City and Martin/Regis shall review this Development Agreement and all actions taken pursuant to the terms of this Development Agreement with respect to the development of the Project every 12 months from the Effective Date to determine good faith compliance with this Development Agreement. The burden of proof, by substantial evidence, of compliance shall be upon Martin/Regis. The time for review may be modified either by mutual written agreement by the parties hereto or by one of the following ways: (a) recommendation by City staff; (b) by resolution of the Planning Commission; or (c) by resolution of the City Council.

11.2 City to Initiate. As required by Resolution 1986-77, the City shall initiate the annual review required by Resolution 1986-77 by providing Martin/Regis with a Compliance Evaluation Form in the form provided in Exhibit G (which form may be revised by City from time to time), at least sixty (60) days prior to the date of the public hearing before the Planning Commission ("Review Date"). Martin/Regis shall return the completed Compliance Evaluation Form, together with all information deemed reasonably necessary or desirable by the City Manager to demonstrate good faith compliance with the provisions of this Development Agreement, to the City within thirty (30) days of the date of mailing of the Compliance Evaluation Form. Failure to return the

Compliance Evaluation, together with the additional requested information, within fifteen (15) days after written demand from the City citing this section shall constitute a default by Martin/Regis under this Development Agreement.

- 11.3 Good Faith Compliance. The annual review required by California Government Code, Section 65865.1, shall be conducted as provided herein. Within sixty (60) days following receipt of Developer's completed Compliance Evaluation Form (including all additional requested information), the City Manager shall review Developer's submission, to ascertain whether Developer has complied in good faith with the terms of this Development Agreement. If the City Manager finds good faith compliance by Developer with the terms of this Development Agreement, the City Manager shall so notify Developer and the Planning Commission in writing and the review for that period shall be concluded. If the City Manager is not satisfied that the Developer is performing in accordance with the terms and conditions of this Development Agreement, the City Manager shall refer the matter to the Planning Commission for a decision and notify Developer in writing at least ten (10) days in advance of the time at which the matter will be considered by the Planning Commission.

The Planning Commission shall conduct a hearing at which Developer must submit evidence that it has complied in good faith with the terms and conditions of this Development Agreement. The findings of the Planning Commission on whether Developer has complied with this Development Agreement for the period under review shall be based upon substantial evidence in the record. If the Planning Commission determines that, based upon substantial evidence, Developer has complied in good faith with the terms and conditions of this Development Agreement, the review for that period shall be concluded. If the Planning Commission determines that, based upon substantial evidence, Developer has not complied in good faith with the terms and conditions of this Development Agreement, the Planning Commission shall forward its report and recommendation to the City Council.

The City Council shall notify the Developer in writing of its intention to conduct a hearing on whether Developer has complied in good faith with the terms and conditions of this Development Agreement and whether the Development Agreement should be modified or terminated. Developer shall be given an opportunity to be heard at the hearing. If the City Council determines that Developer has complied in good faith with the terms and conditions of this Development Agreement, the review for that period shall be concluded. If, however, the City Council determines, based upon substantial evidence in the record, that there are significant questions as to whether Developer has complied in good faith with the terms and conditions of this Development Agreement, the City Council may continue the hearing and shall notify Developer of 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 Development Agreement and to take those actions it deems appropriate, in accordance with California Government Code Section 65865.1.

If Martin/Regis concludes that the City has not complied in good faith with the terms of the annual review process set forth in this Section 11, then Martin/Regis may deliver a Notice of Breach and the parties shall follow the procedure set forth in Section 12 for resolving a breach.

- 11.4 No City Waiver. Subject to Section 13, City does not waive any claim of defect or breach in performance by Martin/Regis if, following periodic review pursuant to this Section 11, City does not propose to modify or terminate this Development Agreement. Subject to Section 13, failure of City to conduct an annual review shall not constitute a waiver by City of its rights to otherwise enforce the provisions of this Development Agreement nor shall Martin/Regis have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

12. Default.

- 12.1 Remedies for Breach. City and Martin/Regis acknowledge that the purpose of this Development Agreement is to carry out the parties' objectives as set forth in the Recitals hereof. City and Martin/Regis agree that to determine a sum of money which would adequately compensate either party for choices they have made which would be foreclosed should the Project not be completed pursuant to and as contemplated by this Development Agreement is not possible and that damages would not be an adequate remedy. Therefore, City and Martin/Regis agree that in the event of a breach of this Development Agreement (following an arbitration determination if arbitration is expressly permitted by other provisions of this Development Agreement and is invoked pursuant to Section 12.3) the only remedies available to the non-breaching party shall be: (1) suits for specific performance to remedy a specific breach; (2) suits for declaratory or injunctive relief; (3) suits for mandamus under Code of Civil Procedure Section 1085, or special writs; or (4) termination of this Development Agreement or, at the option of City in the event of breach by Martin/Regis, termination of the rights of Martin/Regis under this Development Agreement. Except for attorney's fees and associated costs as set forth herein, monetary damages shall not be awarded to either party. This exclusion on damages shall not preclude actions by a party to enforce payments of monies due, or the performance of obligations requiring the expenditures of money, under the terms of this Development Agreement as set forth in subsections (a) through (c), below, of this Section 12.1. All of these remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy. Notwithstanding the above, City agrees that

Martin/Regis shall not be obligated, under any circumstances, to undertake any development described in the Specific Plan, except for the following improvements and actions which are required upon completion of the following specified components of the Project:

(a) Infrastructure public improvements and maintenance obligations for landscaped, recreation, flood control, and open space areas, the obligation for which has accrued under the Existing Approvals, including, without limitation, the final map(s), as applicable, must be completed within the time or sequence specified or otherwise assured pursuant to a subdivision improvement agreement for specific segments of the development of the Project;

(b) Payments required to be made or measures required to be undertaken within specified times under the Existing Approvals; and

(c) Any payments of funds then due and owing by Martin/Regis to City.

12.2 Notice of Breach. Prior to the initiation of any action for relief specified in Section 12.1 above because of an alleged breach of this Development Agreement, the party claiming breach shall deliver to the other party a written notice of breach ("Notice of Breach"). The Notice of Breach shall specify the reasons for the allegation of breach with reasonable particularity. The so-called breaching party shall have thirty (30) days to either: (a) use good faith efforts to cure the breach or, if such cure is of the nature to take longer than 30 days, to take reasonable actions to commence curing the breach during such thirty (30) day period and to thereafter diligently prosecute such cure to completion; or (b) if in the determination of the so-called breaching party, such event does not constitute a breach of this Development Agreement, the so-called breaching party, within thirty (30) days of receipt of the Notice of Breach, shall deliver to the party claiming the breach a notice of non-breach ("Notice of Non-Breach"), which sets forth with reasonable particularity the reasons that a breach has not occurred. Failure to respond within the thirty (30) days shall not be deemed an admission of the breach, but the party alleging the breach may proceed to pursue its remedies hereunder.

12.3 Arbitration. Where provisions of this Development Agreement expressly provide for a matter to be submitted to arbitration, this section shall constitute the binding and unappealable procedure for resolving a factual dispute prior to the initiation of any action for relief specified in Section 12.1. The parties agree that such arbitration shall be conducted by the American Arbitration Association pursuant to its Commercial Arbitration Rules, including the Expedited Procedures ("AAA Rules"), modified as follows:

(a) Pursuant to California Code of Civil Procedure Section 1283.1(b), the parties incorporate by reference herein the provisions of California Code of Civil Procedure Section 1283.05;

(b) The initiating party shall give notice to the other party of its intention to arbitrate as required by the AAA Rules within 10 days after the existence of the factual dispute and shall simultaneously file the notices required by the AAA Rules at the AAA offices in San Francisco;

(c) Discovery shall last no longer than 45 days after selection of the arbitrator;

(d) The arbitrator shall render a decision no later than 14 days after the close of the hearing and submission of all documentation required by the arbitrator;

(e) The losing party in the arbitration shall bear the cost of the arbitration fee and the cost of the stenographic record;

(f) The parties hereby acknowledge and agree that the business location or personal residence of the arbitrator may constitute circumstances affecting impartiality. Pursuant to Rule 19 of the AAA Rules, the arbitrator shall disclose his/her business location and personal residence.

Notwithstanding the foregoing, the arbitrator shall not award damages or determine remedies, but shall be a fact finder and limit his/her determinations to the issues of fact expressly authorized to be submitted to arbitration under other provisions of this Development Agreement and to determining the prevailing party in such disputes between the parties. The arbitrator shall not substitute his or her judgment for what the appropriate decision or action of a party should be under the circumstances, but shall determine only whether a party has acted in accordance with the standards and requirements set forth in this Development Agreement as to the issue submitted to arbitration. By way of example only, if the issue submitted to arbitration is whether City actions pursuant to Section 6.4(e) are arbitrary or capricious, the arbitrator shall determine that fact but shall not determine or prescribe any particular action that City should take or should have taken if, in fact, the arbitrator determines that City actions that were taken were arbitrary or capricious. However, in presenting evidence or argument on the issue of whether actions of City are arbitrary or capricious, the parties shall not be precluded from referring to other alternative actions City might have taken under the circumstances.

The award of remedies following such determinations resulting from arbitration shall be by a court, which shall only resolve questions of law, and shall take into account the provisions of this Development Agreement. The factual findings made by the arbitrator shall be adopted

as the parties' mutual stipulation of facts which shall be used in and govern any court proceeding. The parties acknowledge and agree that the procedure set forth in this Section 12.3 shall constitute a reference by agreement to ascertain a fact necessary to enable a court to determine an action or proceeding as provided by California Code of Civil Procedure Section 638(2).

Nothing in this Section 12.3 shall be deemed to modify or substitute for any other dispute resolution provisions in the Existing Approvals and such other dispute resolutions shall apply according to their terms to the exclusion of the application of the provisions of this Section 12.3.

13. Estoppel Certificate. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (a) this Development Agreement is in full force and effect and a binding obligation of the parties, (b) this Development Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, and (c) the requesting party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and extent of any such defaults. The requesting party may designate a reasonable form of certificate (including a lender's form) and the party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within thirty (30) days following the receipt thereof. The City Manager shall be authorized to execute any certificate requested by Martin/Regis hereunder. Martin/Regis 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 17.1). The request shall clearly indicate that failure of the receiving party to respond within the thirty (30) day period will lead to a second and final request and failure to respond to the second and final request within fifteen (15) days of receipt thereof shall be deemed approval of the estoppel certificate. Failure of Martin/Regis to execute an estoppel certificate shall not be deemed a default, provided that in the event Martin/Regis does not respond within the required thirty (30) day period, City may send a second and final request to Martin/Regis and failure of Martin/Regis to respond within fifteen (15) days from receipt thereof (but only if City's request contains a clear statement that failure of Martin/Regis to respond within this fifteen (15) day period shall constitute an approval) shall be deemed approval by Martin/Regis of the estoppel certificate and may be relied upon as such by City, tenants, transferees, investors, bond counsel, underwriters and bond holders. Failure of City to execute an estoppel certificate shall not be deemed a default, provided that in the event City fails to respond within the required thirty (30) day period, Martin/Regis may send a second and final request to City, with a copy to the City Manager and City Attorney, and failure of City to respond within fifteen (15) days from receipt thereof (but only if Martin/Regis' request contains a clear statement that failure of City to respond within this fifteen (15) day period shall constitute an approval) shall be deemed approval by City of the estoppel certificate and may be relied upon as such by Martin/Regis, tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and Mortgagees.

14. Cooperation and Implementation.

14.1 Processing. Upon completion by Martin/Regis of all required preliminary actions (e.g., submission of a completed application together with all required information) and payment of the applicable processing fees, as set forth herein, City shall commence and diligently process all required actions necessary for the implementation of this Development Agreement and development of the Project.

14.2 Other Governmental Permits. Except for the approvals required from CalTrans for the signalized intersection at El Camino Real/Road A, which the City shall pursue diligently and in good faith, Martin/Regis shall apply in a timely manner for the Other Agency Future Approvals which may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. City shall cooperate with Martin/Regis (without, however, being required to be an advocate for Martin/Regis), without cost or financial obligation on the part of City, in its endeavors to obtain such permits and approvals.

14.3 Cooperation in the Event of Legal Challenge. The City and Martin/Regis shall cooperate in the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Development Agreement, any Existing Approvals or any Future Approvals. To the extent that Martin/Regis determines to contest such litigation challenges, Martin/Regis shall reimburse City, within ten (10) 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 the City shall either: (a) elect to joint representation by Martin/Regis' 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 Martin/Regis prior to incurring obligations to pay legal fees in excess of \$5,000. If Martin/Regis elects not to contest such litigation challenges, the City shall have no obligation to contest such challenges.

15. Transfers, Assignments.

15.1 Limitations on Right to Assign. Because of the necessity to coordinate development of the Property pursuant to the Specific Plan, particularly with respect to the provision of public infrastructure and public services, certain restrictions on the right of the Martin/Regis to assign or transfer its interest under this Development Agreement with respect to the Property, or any portion thereof, are necessary in order to assure the achievement of the goals, objectives and public benefits of the Specific Plan and this Development Agreement with respect to the Property. Martin/Regis agrees to and accepts the restrictions herein set forth in this Section 15 as reasonable and as a material inducement to City to enter into

this Development Agreement. For purposes of this Section 15, a change in the identity of the initial general partner of Martin/Regis (including, but not limited to, the sale or transfer, in the aggregate, of the controlling stock or interest in said general partner) shall be deemed a transfer by Martin/Regis subject to the provisions of this section. Notwithstanding the foregoing, a "Permitted Transfer," as defined below, shall not be deemed a transfer hereunder and Martin/Regis retains the right, in its sole discretion, to enter into or effectuate a Permitted Transfer; provided, however, (a) prior to entering into or effectuating any such Permitted Transfer, Martin/Regis shall provide to City written notice of the proposed Permitted Transfer, which notice shall include such evidence of the business terms of the proposed Permitted Transfer as the City Manager determines is reasonably necessary to verify compliance with this Section 15.1, and (b) prior to any Permitted Transfer involving the transfer or assignment of Martin/Regis' interests under this Development Agreement with respect to the Property, or any portion thereof, Martin/Regis and the proposed assignee/ transferee shall enter into a recordable written assumption agreement in form and content satisfactory to City. The parties agree that all financial information delivered by Martin/Regis to City pursuant to clause (a) of the foregoing sentence that is marked "confidential", if any, shall be deemed confidential, proprietary financial information and the City shall utilize good faith efforts (but shall not be required to incur any litigation costs or expenses) to prevent disclosure of such confidential information to any person or entity, other than City's legal council and financial advisors. For purposes of this Section 15, a "Permitted Transfer" shall mean any of the following: (i) the transfer of any limited partnership interest in Martin/Regis; (ii) the transfer of any stock, partnership interest, membership or other beneficial interest in any limited partner of Martin/Regis or any direct or indirect beneficial owner of any limited partner of Martin/Regis; (iii) the admission of any new limited partner to Martin/Regis; (iv) the admission of any new general partner to Martin/Regis so long as the initial general partner or a Related Entity (defined below) remains a general partner of Martin/Regis and maintains control over the operation and management of Martin/Regis; (v) the assignment of this Development Agreement, or any interest in this Development Agreement, to a corporation, partnership, limited liability company or other entity which shall control, be under the control of, or be under common control with Martin/Regis, TMG Partners, or SARES-REGIS Group of Northern California (collectively, a "Related Entity") (the term "control" as used herein shall mean the ability to direct the operation and management of such corporation, partnership, limited liability company or other entity); or (vi) the transfer of any general partnership interest or other interest in Martin/Regis to a Related Entity so long as the initial general partner or Related Entity remains a general partner of Martin/Regis and maintains control over the operation and management of Martin/Regis. City's remedies hereunder shall be to refuse to recognize any sale, assignment or transfer in violation of the provisions of this Section 15 for purposes of this Development Agreement or to condition City's approval of the sale,

assignment or transfer on provisions deemed reasonably necessary by City to effectuate the purposes of this Development Agreement (except that such conditions may not modify or conflict with the material provisions of this Development Agreement). No such purchaser, assignee or transferee in violation of the provisions of this Section 15 shall have any standing or rights to enforce the provisions of this Development Agreement; provided, however, that so long as Martin/Regis remains liable for the duties and obligations arising under or from this Development Agreement which pertain to the Property or portions thereof sold or transferred and the transferee under such circumstances has expressly acknowledged in writing that its rights are subject to Martin/Regis' performance under this Development Agreement, City shall have no right to void any purchase, assignment or transfer, nor shall City refuse to recognize the purchaser, assignee or transferee for purposes of accepting and processing applications for precise development plans or other permits or entitlements subject to the terms and conditions of this Development Agreement, including requirements for infrastructure, dedications and other conditions of approval applicable to the particular application by such purchaser, assignee or transferee.

15.2 Permitted Assignments. Subject to the terms of this Development Agreement, and provided that Martin/Regis is not in default hereunder, Martin/Regis shall have the right to sell or transfer the Property, in whole or in part, to any person, partnership, limited liability company, joint venture or corporation at any time during the term of this Development Agreement, provided that:

(a) Any such sale or transfer shall include the assignment and assumption of those rights, duties and obligations arising under or from this Development Agreement applicable to the Property or such portion thereof being sold or transferred, and such purchaser, assignee or transferee shall be subject to City's reasonable approval of its qualifications and financial capability to carry out the Project (or such part thereof as pertains to its interest) and shall enter into a recordable written assumption agreement, in form and content satisfactory to City; and

(b) Martin/Regis is not in default under the Existing Approvals, Future Approvals or this Development Agreement (unless said default shall be expressly waived by City in giving its approval or conditional approval hereunder, or Martin/Regis or any such purchaser, assignee or transferee has agreed to cure such default to the reasonable satisfaction of City); and

(c) Prior to establishing Financing Mechanisms to provide the public improvements, facilities and services required under this Development Agreement with respect to the development of the portion of the Property so sold, assigned or transferred, the purchaser, assignee or transferee has either expressly agreed in writing that it will be required to participate in such Financing Mechanisms to the satisfaction of the City as

a condition to development of the portion of the Property sold, assigned or transferred to it, or Martin/Regis has provided other assurances satisfactory to City so that City will not be adversely impacted in the implementation of such Financing Mechanisms; and

(d) Any such sale or transfer is in compliance with all applicable requirements of the Subdivision Map Act and City's ordinances and regulations pertaining thereto.

Martin/Regis shall submit any such proposed sale or transfer of the Property or any portion thereof to City for its prior written approval, which approval shall be given as hereinafter provided if the requirements of this Section 15 are satisfied in the good faith determination of the City. Upon obtaining City's express written approval and upon the express written assumption of any or all of those obligations of Martin/Regis (including, if deemed necessary by City, the curing of then existing defaults of Martin/Regis pertaining to the Property or so much of the Property being transferred) under this Development Agreement by such purchaser or transferee of the Property or any portion thereof, Martin/Regis shall be relieved of its legal duty to perform said obligations under this Development Agreement at the time of such assignment, except to the extent that Martin/Regis is in monetary default of any of the terms of this Development Agreement, as to the Property or such portion thereof sold or transferred. Any and all successors of Martin/Regis in compliance with the provisions of this Section 15 shall have all of the same benefits, rights, duties and obligations of Martin/Regis hereunder as to the Property or such portion thereof sold or transferred.

No sale or transfer shall be recognized under this Development Agreement, nor shall any person or entity acquire any rights hereunder by virtue of such sale or transfer, unless and until all of the conditions and requirements of this Section 15, including City's express written approval and the execution of a written assumption agreement, have been complied with. Any such sale or transfer in compliance with the requirements of this Section 15 shall be deemed a "Permitted Assignment" hereunder and any such purchaser or transferee shall be deemed a "Permitted Assignee" hereunder.

Subsequent sale or transfer of property by a Permitted Assignee shall also be subject to the requirements of this Section 15.

The requirements of this Section 15 shall not apply to sales, assignments, transfers or dedications of property to City or another public entity in satisfaction of conditions of a tentative or final subdivision or parcel map or any other Existing Approval or Future Approval.

- 15.3 City Administration of Assignment Provisions. City shall administer the provisions of this Section 15 through its City Manager or his/her

designee. Martin/Regis shall notify the City Manager in writing pursuant to this Section 15 of its request for City consent to any sale, assignment or transfer under this Section 15 requiring such consent, together with supporting information and satisfaction of the conditions set forth in Section 15.2 above, together with clear notice that failure of City to respond within thirty (30) days will lead to a second and final request and failure to respond to the second and final request within twenty (20) days of receipt thereof shall be deemed approval. Martin/Regis shall furnish such additional information as City Manager, City Council or any designee may reasonably request and City shall proceed to consider and act upon Martin/Regis' request for City consent to the proposed sale, assignment or transfer. City shall have thirty (30) days from the date of receipt of such request to approve or deny the request of sale, assignment or transfer based on the standards set forth in this Section 15, including but not limited to failure of Martin/Regis to submit requested information. In the event that City fails to act within the thirty (30) day period, Martin/Regis may send a second and final request to the City Council, with a copy to the City Manager and City Attorney, together with a clear statement indicating that if City does not act upon such request within twenty (20) days following receipt of this second request, the request shall be deemed approved pursuant to the provisions of this Section 15.3. Failure of City to act within this twenty (20) day period shall be deemed an approval of the request, provided Martin/Regis has included the statement to that effect in its notice to City and has provided in a timely manner all other information required in connection with said request. A denial by City of the request based upon late, inaccurate or insufficient information furnished by Martin/Regis shall not be deemed unreasonable. If denial is based upon such grounds, Martin/Regis may cure such deficiency and reinstate its request by providing such information, thereby starting the initial thirty (30) day period anew.

- 15.4 Release Upon Transfer. Upon the sale, transfer or assignment of all or a portion of Martin/Regis' rights and interests under this Development Agreement to a Permitted Assignee pursuant to Section 15.2, Martin/Regis shall be released from its obligations under this Development Agreement with respect to that portion of the Property sold, transferred or assigned and any default or breach with respect to the transferred or assigned rights and/or obligations shall not constitute a default or breach with respect to the remaining rights and/or obligations under this Development Agreement, provided that (a) Martin/Regis is not then in default under this Development Agreement, (b) Martin/Regis has provided to City notice of such transfer, and (c) the transferee executes and delivers to City a written agreement in which (i) the name and address of the transferee is set forth and (ii) the transferee expressly and unconditionally assumes all of the obligations of Martin/Regis under this Development Agreement with respect to that portion of the Property sold, transferred or assigned and agrees to cure any default of Martin/Regis then existing with respect to the portion of the Property being sold, transferred or assigned. Failure to deliver a written assumption

agreement hereunder shall not effect the running of any covenants herein with the land, as provided in Section 20.3 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Development Agreement. Execution by City of a written assumption agreement which complies with the foregoing requirements shall release Martin/Regis from its obligations under this Development Agreement with respect to that portion of the Property sold, transferred or assigned.

16. Other Vesting Statutes, Land Use Entitlements. The parties intend that, so long as this Development Agreement is in effect, the provisions of this Development Agreement shall govern and control as to the procedures and the terms and conditions applicable to the development of the Property over any contrary or inconsistent provisions contained in Section 66498.1 *et seq.*, of the Government Code or any other State law now or hereafter enacted purported to grant or vest development rights based on land use entitlements (herein "Other Vesting Statute"). In furtherance of this intent, and as a material inducement to the City to enter into this Development Agreement, Martin/Regis on its own behalf and on behalf of its successors and assigns agrees that:

- (a) Notwithstanding any provisions to the contrary in any Other Vesting Statute, the conditions and requirements of the Existing Approvals, Future Approvals and this Development Agreement shall govern and control the rights of Martin/Regis to develop the Property;
- (b) While this Development Agreement is in effect, Martin/Regis waives the benefits of any Other Vesting Statute insofar as they may be inconsistent or in conflict with the terms and conditions of this Development Agreement, the Existing Approvals or the Future Approvals; and
- (c) While this Development Agreement is in effect, Martin/Regis may make application for a land use entitlement under any Other Vesting Statute, but only insofar as said application for the granting of the land use entitlement pursuant to said application would not be inconsistent or in conflict with the terms and conditions of this Development Agreement, the Existing Approvals or the Future Approvals.

17. Mortgage Protection; Certain Rights of Cure.

17.1 Mortgage Protection. This Development Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording this Development 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 Development Agreement (including but not limited to City's remedies to terminate this Development Agreement, and to seek other relief as provided in this Development Agreement) shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee

("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

17.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 17.1 above, no Mortgagee shall have any obligation or duty under this Development Agreement to construct or complete the 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 uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Development Agreement, or otherwise under the Existing Approvals and Future Approvals.

17.3 Notice of Default to Mortgagee. If City receives a written notice from a Mortgagee or from Martin/Regis or any Permitted Assignee requesting a copy of any notice of default given Martin/Regis or a designated Permitted Assignee hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee at such Mortgagee's cost (or Martin/Regis' cost), concurrently with service thereon to Martin/Regis, any notice given to Martin/Regis with respect to any claim by City that Martin/Regis is in default hereunder, and if City makes a determination of default hereunder, City shall if so requested by such Mortgagee likewise serve at such Mortgagee's cost (or Martin/Regis' cost) notice of such noncompliance on such Mortgagee concurrently with service thereon on Martin/Regis. Each Mortgagee shall have the right during the same period available to Martin/Regis 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.

17.4 No Supersedure. Nothing in this Section 17 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision improvement agreement or other obligation incurred with respect to the Project outside this Development Agreement, nor shall any provision of this Section 17 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 17.3.

18. Indemnification and Insurance.

18.1 Indemnification. It is specifically understood and agreed by the parties that the development contemplated by this Development Agreement is a private development, that City has no interest in or responsibility for or duty to third persons concerning any of said improvements, and that Martin/Regis shall have full power over the exclusive control of the Property herein described subject only to the limitations and obligations of Martin/Regis under this Development Agreement. Martin/Regis hereby agrees to and shall indemnify, defend and hold City and its elected and appointed representatives, officers, agents and employees harmless from any liability for damage or claims for damage for bodily injury, including death, as well as from claims for property damage which may

arise from Martin/Regis' operations under this Development Agreement, excepting suits and actions brought by Martin/Regis for default of this Development Agreement or arising from the gross negligence or willful misconduct of City to the extent, if any, that such gross negligence or willful misconduct has contributed to such damage.

This indemnification and hold harmless agreement applies to all damages and claims for damages suffered or alleged to have been suffered by reason of the operations referred to in this Section 18.1, regardless of whether or not City prepared, supplied or approved plans or specifications for the Project, but does not apply to damages and claims for damages caused by City with respect to public improvements and facilities after City has accepted responsibility for such public improvements and facilities.

18.2 Insurance. At all times during the term of this Development Agreement, Martin/Regis shall provide, maintain and keep in full force and effect, the insurance required under Exhibit F, Insurance, attached hereto, and shall comply with all requirements set forth in Exhibit F.

19. Notices. Formal written notices, demands, correspondence and communications between City and Martin/Regis shall be sufficiently given if: (a) personally delivered; or (b) dispatched by next day delivery by a reputable carrier such as Federal Express to the offices of City and Martin/Regis indicated below, provided that a receipt for delivery is provided; or (c) if dispatched within the San Francisco Bay Area by first class mail, postage prepaid, to the offices of City and Martin/Regis indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as either party may from time-to-time designate by next day delivery or by mail as provided in this Section.

City: City Clerk
City of San Bruno
567 El Camino Real
San Bruno, CA 94066
Telephone: (650) 616-7070
Facsimile: (650) 873-6749

with a copy to: City Attorney
City of San Bruno
567 El Camino Real
San Bruno, CA 94066
Telephone: (650) 616-7003
Facsimile: (650) 742-6515

Martin/Regis: Martin/Regis San Bruno Associates, L. P.
c/o TMG Partners
100 Bush Street, 26th Floor
San Francisco, CA 94104
Attn: David Cropper

Telephone: (415) 772-5900
Facsimile: (415) 772-5911

David Cropper
TMG Partners
2685 Bay Road
Redwood City, CA 94063
Telephone: (650) 569-4989
Facsimile: (650) 569-3648

Mark Kroll
SARES-REGIS Group of Northern
California
393 Vintage Park Dr., Ste. 100
Foster City, CA 94404-1134
Telephone: (650) 378-2800
Facsimile: (650) 570-2233

with a copy to: Jennifer Hernandez, Esq.
Beveridge & Diamond
465 Montgomery St., 18th Fl.
San Francisco, CA 94104
Telephone: (415) 262-4000
Facsimile: (415) 262-4040

Notices delivered by deposit in the United States mail as provided above shall be deemed to have been served two (2) business days after the date of deposit if addressed to an address within the State of California, and three (3) business days if addressed to an address within the United States but outside the State of California.

20. Miscellaneous.

- 20.1 Headings. Section headings in this Development Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Development Agreement.
- 20.2 Severability. Except as otherwise provided herein, if any provision(s) of this Development Agreement is (are) held invalid, the remainder of this Development Agreement shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the parties.
- 20.3 Agreement Runs with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Development Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all of the persons or entities acquiring the Property or any portion thereof, or any

interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Development Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Property hereunder, or with respect to any City-owned property, (a) is for the benefit of such properties and is a burden upon such property, (b) runs with such properties, (c) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each property hereunder, and each other person or entity succeeding to an interest in such properties. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Development Agreement is contained in the instrument by which such person acquired an interest in the Project or the Property.

- 20.4 Applicable Law/Venue/Attorneys' Fees and Costs. This Development Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Development Agreement shall be brought only in the Superior Court of the County of San Mateo, State of California. Should any legal action or arbitration be brought by either party because of breach of this Development Agreement or to enforce any provision of this Development Agreement, the prevailing party shall be entitled to reasonable attorney's fees or arbitration costs and such other costs as may be found by the court or arbitrator.
- 20.5 Recordation of Termination. 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.
- 20.6 Execution. This Development Agreement was approved by the City Council of City by way of Ordinance No. 1653, which was finally adopted on January 8, 2002, and became effective thirty (30) days thereafter, and was duly executed by the parties as of February 7, 2002.
- 20.7 Interpretation. All parties have been represented by counsel in the preparation and negotiation of this Development Agreement, and this Development 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 Development 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.

20.8 Time is of the Essence. Time is of the essence of this Development Agreement and of each and every term and condition hereof.

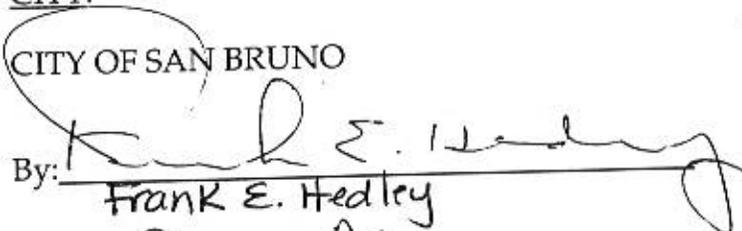
20.9 Agreement is Entire Understanding. This Development Agreement is executed in one (1) original. This Development Agreement consists of 51 pages, including the Recitals, and Exhibits A through G, attached hereto and incorporated by reference herein, which constitute the entire understanding and agreement of the parties. The exhibits are as follows:

- Exhibit A Property Description
- Exhibit A-1 Map of Property
- Exhibit B Specific Plan
- Exhibit C Full Copies of Existing Project Approvals
- Exhibit D Full Copy of Ordinance No. 1653, Authorizing this Agreement
- Exhibit E Affordable Housing Plan
- Exhibit F Insurance
- Exhibit G Sample Compliance Evaluation Form

IN WITNESS WHEREOF, the parties hereto have executed this Development Agreement as of the date first above-written.

CITY:

CITY OF SAN BRUNO

By: 

Frank E. Hedley

Title: City Manager

ATTEST:

By: [Signature]
City Clerk

APPROVED AS TO FORM: Edward R. Simon

McDonough, Holland & Allen

By: [Signature]
City Special Counsel

MARTIN/REGIS:

MARTIN/REGIS SAN BRUNO ASSOCIATES, L.P., a Delaware limited partnership

By: TMG Regis San Bruno LLC, a California limited liability company
Its: General Partner

BY: TMG NAVY LLC, a California limited liability company

By: TMG Partners, a California corporation
Its: Manager

By: [Signature]
Cathy Greenwold
Its: Executive Vice President

By: [Signature]
SCOTT C. VERGES

Its: [Signature]
SECRETARY

APPROVED AS TO FORM:

By: [Signature]
Beveridge & Diamond

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO) ss.

On JANUARY 16, 2002, before me, M. OLIVIA HERNANDEZ, the undersigned, personally appeared CATHY GREENWOLD,

- personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) (is/are) subscribed to the within instrument and acknowledged to me that (he/she/they) executed the same in (his/her/their) authorized capacity(ies), and that by (his/her/their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal:

Signature M. Olivia Hernandez



STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO) ss.

On JANUARY 16, 2002, before me, M. OLIVIA HERNANDEZ, the undersigned, personally appeared SCOTT C. VERGES,

- personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) (is/are) subscribed to the within instrument and acknowledged to me that (he/she/they) executed the same in (his/her/their) authorized capacity(ies), and that by (his/her/their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal:

Signature M. Olivia Hernandez



STATE OF CALIFORNIA)
COUNTY OF SAN MATEO) ss.

On January 23, 2002, before me, PATRICIA GRASSIS, the undersigned, personally appeared Frank E. Hedley

() personally known to me

() proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) (is/are) subscribed to the within instrument and acknowledged to me that (he/she/they) executed the same in (his/her/their) authorized capacity(ies), and that by (his/her/their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal:

Signature Patricia Grassis



EXHIBIT A

PROPERTY DESCRIPTION

REAL PROPERTY in the City of San Bruno, County of San Mateo, State of California, legally described as follows:

A TRACT OF LAND BEING A PORTION OF THOSE LANDS ACQUIRED BY THE UNITED STATES OF AMERICA FROM H.A. AVANSINO, ET AL, AS DESCRIBED IN FINAL JUDGMENT FOR PARCELS 6, 7, 8 AND 10-A OF CIVIL ACTION NO. 23268-G FILED IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, DATED AUGUST 28, 1945, AND RECORDED IN VOLUME 1187, PAGE 443 ON SEPTEMBER 11, 1945 IN THE OFFICIAL RECORDS AT THE COUNTY RECORDER'S OFFICE OF SAN MATEO COUNTY, STATE OF CALIFORNIA, AND ALSO A PORTION OF THOSE LANDS ACQUIRED BY THE UNITED STATES OF AMERICA FROM H.A. AVANSINO, ET AL, AS DESCRIBED IN FINAL JUDGMENT FOR PARCEL, 14 OF CIVIL ACTION NO. 23268-G FILED IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, AUGUST 28, 1945, AND FILED IN VOLUME 1214, PAGE 62 ON SEPTEMBER 11, 1945 IN THE OFFICIAL RECORDS AT THE COUNTY RECORDER'S OFFICE OF SAN MATEO COUNTY, STATE OF CALIFORNIA; AND ALSO A PORTION OF THOSE LANDS ACQUIRED BY THE UNITED STATES OF AMERICA FROM H.A. AVANSINO, ET AL, ACQUIRED BY THE UNITED STATES OF AMERICA FROM H.A. AVANSINO, ET AL, AS DESCRIBED IN FINAL JUDGMENT FOR PARCEL 15 OF CIVIL ACTION NO. 23268-G FILED IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, DATED NOVEMBER 30, 1945, AND FILED IN VOLUME 1231, PAGE 204 ON JANUARY 10, 1946 IN THE OFFICIAL RECORDS AT THE COUNTY RECORDER'S OFFICE OF SAN MATEO COUNTY, STATE OF CALIFORNIA, AND ALSO A PORTION OF THOSE LANDS ACQUIRED BY THE UNITED STATES OF AMERICA FROM GEORGE W. WILLIAMS ET AL, AS DESCRIBED IN FINAL JUDGMENT FOR CIVIL ACTION NO. 34882 FILED IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, DATED MARCH 5, 1956, AND FILED IN VOLUME 2984, PAGE 617 ON MARCH 13, 1956 IN THE OFFICIAL RECORDS AT THE COUNTY RECORDER'S OFFICE OF SAN MATEO COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF BEGINNING OF THOSE LANDS AS DESCRIBED IN SAID FINAL JUDGMENT FOR PARCELS 6, 7, 8 AND 10-A OF CIVIL ACTION NO. 23268-G AND THE MOST SOUTHERLY CORNER OF PARCEL "B" AS DELINEATED ON RECORD OF SURVEY FILED IN BOOK 4 OF L.L.S. MAPS, AT PAGE 89, ON AUGUST 24, 1960 IN THE OFFICIAL RECORDS AT THE COUNTY RECORDER'S OFFICE OF SAN MATEO COUNTY, STATE OF CALIFORNIA; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL "B" AND THE SOUTHWESTERLY BOUNDARY LINE OF THOSE LANDS AS DESCRIBED IN SAID FINAL JUDGMENT FOR PARCELS 6, 7, 8 AND 10-A OF CIVIL ACTION NO. 23268-G, NORTH 24°57'18" WEST, 36.90 FEET (RECORD PER CIVIL ACTION NO. 23268-G - NORTH 25°03'16" WEST); THENCE ALONG THE SOUTHEASTERLY BOUNDARY LINE OF SAID PARCEL "B" AND THE SOUTHEASTERLY BOUNDARY LINE OF SAID FINAL JUDGMENT FOR PARCELS 6, 7, 8 AND 10-A OF CIVIL ACTION NO. 23268-G, SOUTH 67°32'12" WEST, 20.00 FEET (RECORD PER CIVIL ACTION NO. 23268-G - SOUTH 67°26'14" WEST); THENCE ALONG THE NORTHWESTERLY BOUNDARY LINE OF SAID PARCEL "B" AND THE NORTHWESTERLY BOUNDARY LINE OF THOSE LANDS AS DESCRIBED IN SAID FINAL JUDGMENT FOR PARCELS 6, 7, 8 AND 10-A OF CIVIL ACTION NO. 23268-G,

NORTH 59°43'25" EAST, 241.028 FEET (RECORD PER CIVIL ACTION NO. 23268-G - SOUTH 59°37'27" WEST); THENCE CONTINUING ALONG THE NORTHWESTERLY BOUNDARY LINE OF SAID PARCEL "B" AND THE NORTHWESTERLY BOUNDARY LINE OF THOSE LANDS DESCRIBED IN SAID FINAL JUDGMENT FOR PARCELS 6, 7, 8 AND 10-A OF CIVIL ACTION NO. 23268-G, NORTH 62°00'01" EAST, 10.01 FEET (RECORD PER CIVIL ACTION NO. 23268-G - NORTH 61°54'03" EAST) TO THE NORTHEASTERLY LINE OF A ROAD EASEMENT, 50.00 FEET IN WIDTH, GRANTED TO THE CITY OF SAN BRUNO BY THE UNITED STATES OF AMERICA, ON NOVEMBER 12, 1970 AND IDENTIFIED BY NAVY DOCUMENT NUMBER NFR 9570, FILED IN BOOK 5935, PAGE 133 ON MAY 3, 1971, IN THE OFFICIAL RECORDS AT THE COUNTY RECORDER'S OFFICE OF SAN MATEO COUNTY, STATE OF CALIFORNIA; THENCE ALONG SAID NORTHEASTERLY LINE OF SAID ROAD EASEMENT, SOUTH 24°23'04" EAST, 350.815 FEET; THENCE NORTH 64°54'12" EAST, 592.77 FEET TO THE NORTHEASTERLY LINE OF THOSE LANDS AS DESCRIBED IN SAID FINAL JUDGMENT FOR PARCELS 6, 7, 8 AND 10-A OF CIVIL ACTION NO. 23268-G; THENCE ALONG SAID NORTHEASTERLY LINE OF THOSE LANDS AS DESCRIBED IN SAID FINAL JUDGMENT PARCELS 6, 7, 8 AND 10-A OF CIVIL ACTION NO. 23268-G AND THE EXTENSION THEREOF, SOUTH 24°56'53" EAST, 135.49 FEET TO THE SOUTHEASTERLY BOUNDARY LINE OF A 0.014 ACRE OF LAND CONVEYED TO EMIL PLASBERG BY QUITCLAIM DEED FILED IN VOLUME 3998, PAGE 114 ON JUNE 14, 1961 IN THE OFFICIAL RECORDS AT THE COUNTY RECORDER'S OFFICE OF SAN MATEO COUNTY, STATE OF CALIFORNIA; THENCE ALONG SAID SOUTHEASTERLY BOUNDARY LINE OF A 0.014 ACRE OF LAND CONVEYED TO EMIL PLASBERG BY QUITCLAIM DEED FILED IN VOLUME 3998, PAGE 114 ON JUNE 14, 1961 IN THE OFFICIAL RECORDS AT THE COUNTY RECORDER'S OFFICE OF SAN MATEO COUNTY, STATE OF CALIFORNIA; NORTH 65°15'47" EAST, 89.94 FEET TO THE SOUTHWESTERLY BOUNDARY LINE OF THOSE LANDS ACQUIRED BY THE STATE OF CALIFORNIA FOR STATE ROUTE I-380 FROM THE UNITED STATES OF AMERICA, BY DEED FILED IN VOLUME 5238, PAGE 197 ON NOVEMBER 15, 1966 IN THE OFFICIAL RECORDS AT THE COUNTY RECORDER'S OFFICE OF SAN MATEO COUNTY, STATE OF CALIFORNIA; THENCE ALONG SAID SOUTHWESTERLY BOUNDARY LINE OF THOSE LANDS ACQUIRED BY THE STATE OF CALIFORNIA FOR STATE ROUTE I-380, SOUTH 23°08'04" EAST, 377.76 FEET (RECORD PER VOLUME 5238, PAGE 197 - SOUTH 22°00'00" EAST); THENCE CONTINUING ALONG SAID SOUTHWESTERLY LINE OF THOSE LANDS ACQUIRED BY THE STATE OF CALIFORNIA FOR STATE ROUTE I-380 SOUTH 17°47'33" EAST, 111.63 FEET (RECORD PER VOLUME 5238, PAGE 197 - SOUTH 16°39'29" EAST); THENCE CONTINUING ALONG SAID SOUTHWESTERLY BOUNDARY LINE OF THOSE LANDS ACQUIRED BY THE STATE OF CALIFORNIA FOR STATE ROUTE I-380 AND ALONG A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 160.00 FEET, THROUGH A CENTRAL ANGLE OF 74°19'15" FOR AN ARC DISTANCE OF 207.54 FEET; THENCE CONTINUING ALONG THE NORTHERLY BOUNDARY LINE OF SAID LANDS ACQUIRED BY THE STATE OF CALIFORNIA FOR STATE ROUTE I-380 SOUTH 56°31'42" WEST, 164.42 FEET (RECORD PER VOLUME 5238, PAGE 197 - SOUTH 57°39'46" WEST); THENCE CONTINUING ALONG THE NORTHWESTERLY BOUNDARY LINE OF SAID LANDS ACQUIRED BY THE STATE OF CALIFORNIA FOR STATE ROUTE I-380, SOUTH 67°18'18" WEST, 353.97 FEET (RECORD PER VOLUME 5238, PAGE 197 - S 68°26'22" WEST); THENCE CONTINUING ALONG THE NORTHWESTERLY BOUNDARY LINE OF SAID LANDS ACQUIRED BY THE STATE OF CALIFORNIA FOR STATE ROUTE I-380 SOUTH 22°41'42" EAST, 23.60 FEET (RECORD PER VOLUME 5238, PAGE 197 - SOUTH 21°33'38" EAST); THENCE CONTINUING ALONG THE NORTHWESTERLY BOUNDARY LINE OF SAID LANDS ACQUIRED BY THE STATE OF CALIFORNIA FOR STATE ROUTE I-380, SOUTH 60°16'50" WEST, 387.20 FEET (RECORD PER VOLUME 5238, PAGE 197 - SOUTH 61°24'54" WEST) TO THE WESTERLY LINE OF PARCEL J AS DELINEATED ON RECORD OF SURVEY FILED IN BOOK 4 OF L.L.S. MAPS, AT PAGE 89, ON AUGUST 24, 1960 IN THE OFFICIAL RECORDS AT THE COUNTY RECORDER'S OFFICE OF SAN MATEO COUNTY, STATE OF CALIFORNIA; THENCE ALONG SAID WESTERLY BOUNDARY LINE OF PARCEL J AND PARCEL D AS DELINEATED ON RECORD OF

SURVEY FILED IN BOOK 4 OF L.L.S. MAPS, AT PAGE 89, ON AUGUST 24, 1960 IN THE OFFICIAL RECORDS AT THE COUNTY RECORDER'S OFFICE OF SAN MATEO COUNTY, STATE OF CALIFORNIA, NORTH 22°29'22" WEST, 743.24 FEET TO THE NORTHWESTERLY CORNER OF SAID PARCEL D AND THE NORTHERLY BOUNDARY LINE OF SAID PARCEL 15 OF CIVIL ACTION NO. 23268-G, FILED IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, NOVEMBER 30, 1945 AND FILED IN VOLUME 1231, PAGE 204 ON JANUARY 10, 1946, IN THE OFFICIAL RECORDS AT THE COUNTY RECORDER'S OFFICE OF SAN MATEO COUNTY, STATE OF CALIFORNIA; THENCE ALONG THE NORTHWESTERLY BOUNDARY LINE OF SAID PARCEL "D" AND ALONG SAID PARCEL 15 OF CIVIL ACTION NO. 23268-G, AND ALSO ALONG PARCEL 14 OF CIVIL ACTION NO. 23268-G FILED IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, AUGUST 28, 1945 AND FILED IN VOLUME 1214, PAGE 62 ON SEPTEMBER 11, 1945, IN THE OFFICIAL RECORDS AT THE COUNTY RECORDER'S OFFICE OF SAN MATEO COUNTY, STATE OF CALIFORNIA, NORTH 67°32'12" EAST, 123.01 FEET TO THE POINT OF BEGINNING. THROUGH THOSE SAID LANDS AS DESCRIBED IN THE THE FINAL JUDGEMENT FOR PARCELS 6, 7, 8, AND 10-A OF CIVIL ACTION NO. 23268-G, RECORDED AUGUST 28, 1945, 1187, PAGE 443, SAN MATEO COUNTY RECORDS, N67°18'43"E, 148.27 FEET; THENCE CONTINUING THROUGH THOSE SAID LANDS AS DESCRIBED IN THE FINAL JUDGEMENT FOR PARCELS 6, 7, 8 AND 10-A OF CIVIL ACTION 23268-G, RECORDED AUGUST 28, 1945, IN VOLUME 1187, PAGE 443, SAN MATEO COUNTY RECORDS, N64°04'59"E, 327.12 FEET; THENCE CONTINUING THROUGH THOSE SAID LANDS AS DESCRIBED IN THE FINAL JUDGEMENT FOR PARCELS 6, 7, 8 AND 10-A OF CIVIL ACTION NO. 23268-G, RECORDED AUGUST 28, 1945, IN VOLUME 1187, PAGE 443, SAN MATEO COUNTY RECORDS, N65°16'53"E, 117.03 FEET TO SAID NORTHEASTERLY BOUNDARY LINE OF THAT LAND DESCRIBED IN THE FINAL JUDGEMENT FOR PARCELS 6, 7, 8 AND 10-A OF CIVIL ACTION NO. 23268-G; THENCE ALONG SAID NORTHEASTERLY BOUNDARY OF THOSE LANDS AS DESCRIBED IN THE FINAL JUDGEMENT FOR PARCELS 6, 7, 8 AND 10-A OF CIVIL ACTION NO. 23268-G, S24°56'53"E, 51.00 FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT A-1

MAP OF PROPERTY

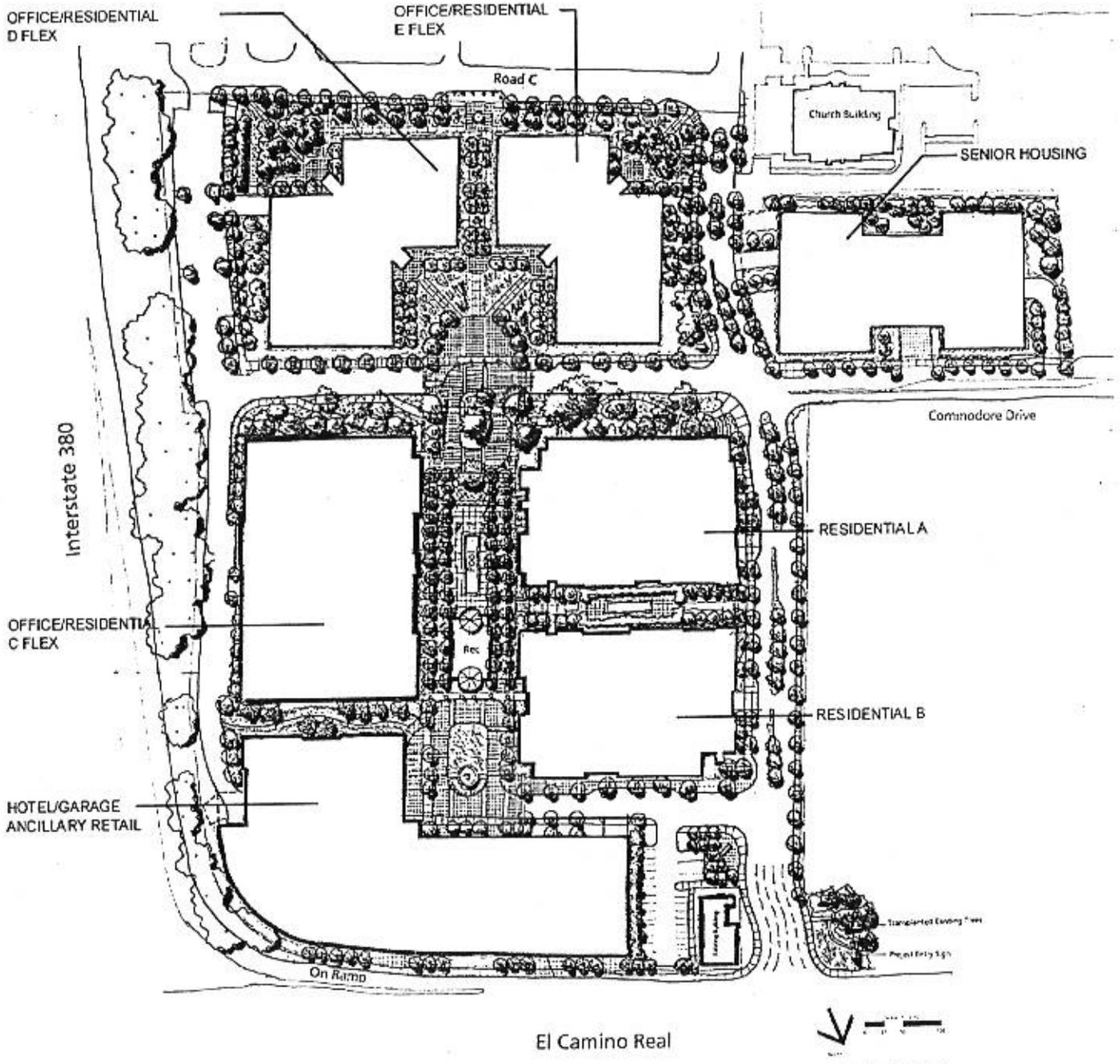


EXHIBIT B

SPECIFIC PLAN

The Specific Plan consists of that certain Specific Plan, as approved and adopted by the City Council on January 9, 2001, by Resolution No. 2001-3 and amended on December 11, 2001, by Resolution No. 2001-82, including all Conditions of Approval and any revised Specific Plan or amendment to the Specific Plan in satisfaction of or pursuant to the Conditions of Approval. The Specific Plan is on file in the Office of Community Development, City of San Bruno, 567 El Camino Real, San Bruno, California 94066.

EXHIBIT C

FULL COPIES OF EXISTING PROJECT APPROVALS

On January 9, 2001, the City certified a Final Environmental Impact Report for the Project (Resolution No. 2001-1) and on December 11, 2001, an Addendum to the EIR (Resolution No. 2001-82) (collectively the "Crossing EIR").

On January 9, 2001, the City approved a General Plan Amendment (Resolution No. 2001-2).

On January 9, 2001, the City approved a Specific Plan (Resolution No. 2001-3) and on December 11, 2001, a Specific Plan Amendment (Resolution No. 2001-82) (collectively the "Specific Plan") that includes the major development, circulation and infrastructure elements for the Project.

On January 23, 2000, the City adopted an ordinance amending the San Bruno Zoning Ordinance and Zoning Map to establish the zoning for the Project Site (Ordinance No. 1635).

On June 5, 2001, voters approved Initiative Measure E by majority vote at a special municipal election pursuant to Local Ordinance 1284.

RESOLUTION NO. 2001-1

**RESOLUTION OF THE SAN BRUNO CITY COUNCIL ADOPTING
CEQA FINDINGS, FACTS IN SUPPORT THEREOF, AND
OVERRIDING CONSIDERATIONS AND A MITIGATION,
MONITORING & REPORTING PROGRAM FOR THE U.S. NAVY
SITE AND ITS ENVIRONS**

WHEREAS, a Draft EIR and a Final EIR have been prepared for the U.S. Navy Site and its Environs Specific Plan;

WHEREAS, the Planning Commission held a public hearing on December 19, 2000, pursuant to notice required by law, and recommended that the City Council certify such Final EIR;

WHEREAS, the City Council held a duly noticed public hearing on the U.S. Navy Site and its Environs Specific Plan on January 9, 2001; and

WHEREAS, the City Council has fully considered the discussion and analyses in the Draft and Final EIR, staff reports, and other portions of the hearing record regarding the environmental impacts of alternative proposed, including the "No Project" and "No Voter Approval", and "No Intersection" alternatives.

BE IT RESOLVED by the City Council of the City of San Bruno that it hereby adopts and makes the following Findings ("Findings") and facts in support thereof pursuant to the California Environmental Quality Act for the U.S. Navy Site and Its Environs Specific Plan ("Plan"), located on the U.S. Navy Site, The Marine Corps Reserve Site, and adjacent properties, all located West of El Camino Real and North of I-380 in San Bruno, California:

I. INTRODUCTION

A. THE ENVIRONMENTAL IMPACT REPORT

The City prepared an Initial Study under the California Environmental Quality Act ("CEQA") to determine whether an Environmental Impact Report ("EIR") or a negative declaration would be prepared for the Project. The Initial Study indicated that the Project could have significant adverse environmental impacts, and the City directed that an EIR could be prepared. The City circulated a Draft Environmental Impact Report ("Draft EIR" or "DEIR") on October 27, 2000 for review and comment by affected public agencies, adjacent landowners, and interested members of the public. The 45-day comment period closed December 11, 2000.

The City prepared written responses to comments received during the comment period, which were provided to the Planning Commission on December 15, 2000

(Comments and Responses document"). On December 19, 2000, after reviewing the Draft EIR, the Comments and Responses document, and all available testimony and evidence in the record, the City Planning Commission directed that a Final Environmental Impact Report ("Final EIR" or "FEIR") be prepared. The Final EIR, including all comments and responses, was then published and made available to affected agencies. The Planning Commission, after due deliberation, recommended that the San Bruno City Council certify the Final EIR as having been completed in accordance with CEQA.

The City Council, following a duly noticed public hearing on January 9, 2001, has fully considered the discussion and analyses in the Final EIR, staff reports, Planning Commission recommendations, and other portions of the hearing record regarding the environmental impacts of the alternative proposed, including the "No Project" and "No Voter Approval", and "No Intersection" alternatives.

For the purposes of these Findings, the Final EIR consists of the Initial Study, the Draft EIR, the Comments and Responses document, the Mitigation, Monitoring, & Reporting Program ("MMRP"), and all documents incorporated by reference therein.

B. SCOPE OF THESE FINDINGS

CEQA Guidelines in Section 15091 require that a project's significant environmental impacts identified in an EIR be addressed by one of three findings, as set forth in 15091(a). To insure that all significant project impacts are identified, and necessary findings made, these Findings list the significant impacts and mitigation measures identified in the Final EIR and set forth the corresponding required findings. These Findings list the project impacts that are less-than-significant and, where appropriate, mitigation measures for these impacts. These Findings also identify unavoidable impacts and the necessary statement of overriding considerations.

C. DESCRIPTION OF THE RECORD

For purposes of CEQA, and these Findings, the record of administrative proceedings before this City Council includes, without limitation, the following:

1. The Final EIR, which includes the Initial Study, the Draft EIR, the Comments and Responses document, MMRP, and all documents incorporated by reference therein;
2. All City staff reports on the Plan and the Final EIR;
3. All studies conducted for the Plan and the EIR, and contained or incorporated by reference in the EIR, including appendices;

4. All public reports and documents prepared for the Planning Commission, the City Council or the City;
5. All documentary and oral evidence either received and reviewed at, or obtained as a result of, public workshops and public hearings related to the Plan and the EIR;
6. The minutes, transcripts, and other records for all public workshops and public hearings related to the Plan and the EIR;
7. All applicable City ordinances, resolutions and planning documents;
8. All matters of common knowledge to the City Council, including, but not limited to (i) the City's fiscal status; (ii) the City's policies and regulations; (iii) reports, projections and correspondence related to development within and surrounding the City; and (iv) state laws, regulations and publications, including all reports and guidelines published by the California Office of Planning and Research.
9. All public records in files maintained by the City relative to the Plan and the EIR.

D. GENERAL CONDITIONS

1. Reliance on the Record

Each and all of the findings and determinations contained herein are based upon competent and substantial evidence, both oral and written, contained in the entire record relating to the Plan. These findings and determinations constitute the independent findings and determinations of the City Council in all respects.

2. Summaries of Impacts, Mitigation Measures, Facts, Alternatives and Other Matters

All summaries of information relating to the Plan are based on the referenced environmental documents and/or other substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact. Moreover, the summaries set forth below, including, without limitation, summaries of impacts, mitigation measures and alternatives, are only summaries. Cross-references to the Final EIR and other documents in the record have been made and the reader should refer directly to those documents for more precise information regarding the facts on which the summary is based.

3. Adoption of Mitigation Measures

These Findings are based upon the numerous mitigation measures set forth in the Final EIR which reduce or eliminate potential impacts, all of which shall be implemented in connection with the adopted MMRP. The City Council finds that the mitigation measures set forth in the Final EIR and the MMRP can reasonably be expected to reduce adverse impacts related to the Plan.

II. LESS-THAN-SIGNIFICANT PROJECT IMPACTS FOR WHICH NO MITIGATION IS PROVIDED

The City Council finds that certain potential impacts evaluated in the Final EIR will cause a less-than-significant impact and do not require mitigation. These less-than-significant impacts are listed in Table S.1 on pages S-11 through S-13 of the Draft EIR, and pages 17 through 19 of the Response to Comments document.

III. SIGNIFICANT BUT MITIGABLE IMPACTS

The City Council finds that certain potential impacts evaluated in the Final EIR will cause a significant adverse environmental effect prior to mitigation. The City Council finds that the adoption of the mitigation measures identified in the Final EIR will reduce these significant impacts to a level of insignificance. These significant but mitigable impacts are listed in Table S.1 of the Draft EIR on pages S-3 through S-10 and discussed further in Chapter 3 of the Draft EIR and in the Comments and Responses Document (Table S.1 on pages 6 through 16) and the MMRP.

IV. SIGNIFICANT UNAVOIDABLE IMPACTS

Facts. The Final EIR summarizes the Project's significant, unavoidable impacts in Table S.1 on page S-3 of the Draft EIR and the MMRP. CEQA requires that significant unavoidable impacts of the Plan be described.

The City Council finds that the Plan has avoided all potentially significant impacts to the extent feasible. Even after mitigation, the following impact remains and is identified as a significant unavoidable impact.

Air Quality. Development under the proposed Specific Plan would contribute to the cumulative effect of Bay Area development on regional ozone and PM-10 concentrations. The Specific Plan could result in the construction of new residential housing units, commercial, office, retail, and hotel uses. The additional housing units would add additional population to the City. Some of the projects under the Specific Plan were included in the policies and land uses of

the City's General Plan and would occur regardless of the implementation of the Specific Plan. For example, the EIR concludes that while the number of new daily vehicle trips added to the roadway network under the proposed Specific Plan would be slightly fewer than under the Redevelopment Plan (which provides for up to 5,487 new daily vehicle trips above and beyond the General Plan), the net new trips would still be above that accounted for in the General Plan.

The Bay Area Air Quality Management District (BAAQMD) projects future mobile and stationary sources of emissions based on growth projections from the Association of Bay Area Governments (ABAG). The resultant emission forecasts are then used to develop strategies and control measures necessary to achieve regional ozone attainment within a designated timeframe. City staff informed ABAG of a portion, but not all, of the additional residential development that could occur under the Specific Plan beyond the General Plan. Thus, only a portion of the Plan was accounted for in preparing the '97 *Clean Air Plan*. A primary goal of the '97 *Clean Air Plan* is to reduce the number of trips and vehicle miles Bay Area residents travel in single-occupant vehicles. To achieve this goal, the '97 *Clean Air Plan* includes 20 Traffic Control Measures (TCMs). Development proposed under the Specific Plan would be Transit Oriented Development (TOD), a concept that places more dense, mixed use activities near transportation nodes. For example, the Specific Plan would essentially be an infill project in that it would center on development around existing and planned transit routes (including BART and Caltrain stations) and would convert underutilized land within an urban area into productive uses. The Specific Plan site is also close to significant employers in neighboring cities. As a result, the Plan would likely reduce the number and length of single-occupant automobile trips.

Nonetheless, because the population growth that would occur with the Specific Plan exceeds the values included in the '97 *Clean Air Plan*, the Plan is not consistent with the '97 *Clean Air Plan* and is considered a significant cumulative impact on air quality emissions. For this reason, project-specific and cumulative impacts related to air quality are considered unavoidably significant. All legally feasible mitigation has been identified and adopted to mitigate this impact; this mitigation is listed under the "Clean Air Transportation Control Measures To Be Implemented By Local Governments" in Table III.H.3 on page III.H-14 of the Draft EIR. In addition, discussion and mitigation for this impact are included in the MMRP.

V. STATEMENT OF OVERRIDING CONSIDERATIONS

Following a determination that significant impacts remain after the adoption of all feasible mitigation measures, approval of a project must be accompanied by a Statement of Overriding Considerations. CEQA requires the benefits of a project to be balanced against its significant unavoidable impacts in determining whether to approve the project (CEQA Guidelines Section 15093(a)). The Final EIR

discusses numerous potential direct and cumulative impacts that could result from the Plan. One of these would result in unavoidable impacts. This unavoidable impact is set forth in Section IV, herein.

The City Council finds that the benefits of the Plan outweigh this unavoidable adverse environmental impact. In making this determination, the following factors and public benefits were considered and comprise the Statement of Overriding Considerations.

The benefits of the project include the following:

- A. Recovery of Blighted Area With New Community The redevelopment of the former Navy site and its environs will not only reduce blight by replacing a former military site with a new planned residential community, but will also convert underutilized land within an urban area into productive uses.
- B. San Bruno Redevelopment Area Plan The Project is consistent with, and furthers the goals of, the San Bruno Redevelopment Area Plan for Project Planning Area A, and fulfills Mitigation Measure M.4a of the San Bruno Redevelopment Project Area Plan EIR. In addition, it will make a significant contribution to the Redevelopment Agency and will provide an opportunity for the Agency to implement its plan by providing redevelopment funds.
- C. Social and Economic Benefits. The creation of new jobs and increased generation of revenues would provide greater employment opportunities for the residents of San Bruno, and allow existing residents to live and work within the same community.
- D. Creation of Jobs. The creation of new jobs and increased generation of revenues would allow a greater number of residents who currently rent or lease a dwelling unit to be able to afford to purchase a home and to live and work in the same city.
- E. Affordable Housing. The creation of additional housing in the City, including increased affordability through an Affordable Housing Program, which would provide housing available for all economic segments of the community.
- F. Planned Unit Development. The Plan will result in consistent and comprehensive development of and avoid fractionalization or piecemeal development. The opportunity afforded by consistent and integrated land uses is a benefit to the City as it grows.

- G. Tax Revenue. The Project will contribute to the tax base of the City through sales, tax revenues generated by local businesses, including transit occupancy tax related to the proposed 400 to 500 room hotel, and from additional businesses and employees, and will significantly increase available tax increment funding to the Redevelopment Agency.
- H. Pedestrian Opportunities. The Project and the City will benefit from the creation of significant pedestrian-friendly linkages for residents of the planned area and the City.

VI. ALTERNATIVES

An unavoidable significant effect on air quality would occur under each alternative, even the No Project Alternative. That is, in each case, as is described in Chapter IV of the Draft EIR, as amended by the Responses to Comments document. Impacts to air would remain basically the same or higher for each alternative.

The No Project Alternative, which assumes redevelopment under the current land use designations consistent with the Redevelopment Plan, would not meet the objectives of the Specific Plan, and would result in potentially significant traffic related and air quality impacts.

While the No Voter Approval Alternative, which envisions land uses generally the same as the proposed Plan, but as restricted by building heights of no greater than three stories or 50 feet in height and no above grade parking structure, would result in slightly less density-related impacts than the Plan (i.e., impacts to traffic, schools, and public services, such as police and wastewater), most significant impacts would remain essentially the same. The "No Voter Approval Alternative" does not provide for the density the City envisions in the Specific Plan to meet the Transit Oriented Development goals of the Specific Plan.

The "No Intersection Alternative" would have the same density-related impacts (such as traffic and public services) as the project. This Alternative also would not reduce or eliminate any of the significant impacts of the Project.

BE IT FURTHER RESOLVED, by the City Council of the City of San Bruno that it hereby adopts the, Statement of Overriding Considerations, and MMRP contained within and incorporated into this Resolution to be adequate for the purposes of CEQA.

BE IT FURTHER RESOLVED, by the City Council of the City of San Bruno that it hereby certifies the final EIR consistent with this Council's findings above.

I hereby certify that foregoing Resolution No. 2001-1
was introduced and adopted by the San Bruno City Council
at a regular meeting on January 9, 2001 by the following vote:

AYES: Councilmembers Ibarra, O'Connell, Pallas, Ruane; Mayor Franzella

NOES: None

ABSENT: None


CITY CLERK

I hereby certify this to be a full, true and correct
copy of the document it puports to be, the
original of which is on file in my office.

Dated: 1-11-01


City Clerk of the City of San Bruno

RESOLUTION NO. 2001-82

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO TO APPROVE AN ADDENDUM TO THE U.S. NAVY SITE AND ITS ENVIRONS SPECIFIC PLAN EIR AND AMEND THE U.S. NAVY SITE AND ITS ENVIRONS SPECIFIC PLAN, WITH CHANGES TO POLICIES, PROVISIONS, DENSITIES, HEIGHT OF BUILDINGS AND STRUCTURES, CIRCULATION AND LAND USE MAP DESIGNATIONS TO ACCOMMODATE FLEXIBLE ZONING OF OFFICE AND RESIDENTIAL USES -- (GPA-01-02)

WHEREAS, on January 9, 2001, the City Council and the Redevelopment Agency of the City of San Bruno amended the San Bruno 1984 General Plan by adopting the U.S. Navy Site and its Environs Specific Plan ("Specific Plan"), with policies, provisions, densities, heights of buildings and structures, circulation and land use map designations and certified the Final U.S. Navy Site and its Environs Environmental Impact Report ("EIR") as complete, correct and adequate, and prepared in accordance with all applicable State, local, and regional guidelines;

WHEREAS, the property owner/developer, Martin/Regis San Bruno Associates, L.P., determined that due to current economic conditions, the office land use component of the Specific Plan may not be economically viable and requested additional flexibility to pursue alternatives to keep the development on schedule and producing revenue for the City;

WHEREAS, Martin/Regis San Bruno Associates, L.P., in conjunction with staff of the Community Development Department, have proposed amendments to the Specific Plan which include: increased density for multi-family and senior residential uses; heights of buildings in conformance Measure E approved by San Bruno voters pursuant to Local Ordinance 1284; changes to pedestrian and vehicle circulation; and land uses to accommodate flexibility of uses on the office and residential land use parcels ("Specific Plan amendments");

WHEREAS, the Specific Plan is by its nature general and diagrammatic in many respects, and at a specific level of detail of development may be found to inadvertently conflict with existing City codes and specifications; therefore, it is hereby acknowledged that unless specifically limited by development agreement, Martin/Regis and any other applicant of a project pursuant to the Specific Plan must either comply with such applicable codes and specifications or seek City approval of variances or exceptions therefrom;

WHEREAS, Environmental Science Associates has prepared an Addendum to the adopted Environmental Impact Report for the U.S. Navy Site and its Environs Specific Plan, which analyzes impacts of the proposed Specific Plan amendments, documents the technical changes to the project description, and adds two additional potential development alternatives to the EIR;

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) and implementing Guidelines, an Addendum to the EIR has been prepared because the proposed project is substantially consistent with the type and intensity of land uses analyzed in the previously certified EIR, there are no new significant impacts nor any substantial increase in the severity of previously identified significant impacts, identified with the proposed project, and the mitigation measures adopted as part of the previous EIR are also applicable to the proposed project;

WHEREAS, the amendments to the Specific Plan are consistent with the San Bruno General Plan, as amended by City Council Resolution 2001-2;

WHEREAS, the amendments to the Specific Plan are consistent with the San Bruno Redevelopment Project Area Plan adopted June 1999;

WHEREAS, a Notice of Public hearing was mailed on November 9, 2001 and duly posted in the San Bruno Herald on Saturday, November 10, 2001 for consideration of the Specific Plan amendments and environmental review before the Planning Commission;

WHEREAS, the Planning Commission held a Public Hearing on the Specific Plan and environmental review documents on November 20, 2001 and on said date, the Public Hearing was opened, held and closed;

WHEREAS, the Planning Commission, by its Resolution No. 2001-05 hereby determined that the amendments to the U.S. Navy Site and its Environs Specific Plan, dated November 2001, are consistent with the City of San Bruno's 1984 General Plan, and that said Planning Commission recommended to the City Council the adoption of the amendments to the U.S. Navy Site and Its Environs Specific Plan and the addendum to the EIR; and,

WHEREAS, at a duly noticed public hearing on December 11, 2001, this Council considered the Planning Commission's recommendation;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of San Bruno that it hereby determines the amendments to the U.S. Navy Site and its Environs Specific Plan, dated November 2001, to be consistent with the City of San Bruno's 1984 General Plan;

BE IT FURTHER RESOLVED, that the City Council finds that the proposed amendments do not create new significant impacts nor do they substantially increase the severity of previously identified significant impacts and hereby approves the Addendum to the EIR;

BE IT FURTHER RESOLVED, that the City Council hereby adopts said amendments to the U.S. Navy Site and its Environs Specific Plan as set forth in the summary of amendments to the Specific Plan dated November 2001 attached hereto as Exhibit "A".

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I hereby certify that the foregoing Resolution No. 2001-82 was duly introduced and adopted by the San Bruno City Council at a regular meeting held on December 11, 2001, by the following vote:

AYES:	COUNCILMEMBERS:	Franzella, Ibarra, O'Connell, Ruane
NOES:	COUNCILMEMBERS:	Pallas
ABSENT:	COUNCILMEMBERS:	None



Ed Simon, City Clerk

RESOLUTION NO. 2001-2

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO AMENDING THE SAN BRUNO 1984 GENERAL PLAN BY ADOPTING THE U.S. NAVY SITE AND ITS ENVIRONS SPECIFIC PLAN, WITH POLICIES, PROVISIONS, DENSITIES, HEIGHT OF BUILDINGS AND STRUCTURES, CIRCULATION AND LAND USE MAP DESIGNATIONS TO GUIDE FUTURE DEVELOPMENT IN THAT PORTION OF THE CITY OF SAN BRUNO (GPA-00-01)

WHEREAS, on November 16, 1999, the chairman of the San Bruno Planning Commission appointed a Citizens Advisory Committee (CAC) to make recommendations on a Specific Plan for the U.S. Navy Site and its Environs, with the committee comprised of two members of the Planning Commission, stakeholders in adjacent properties (including commercial, office, church, residential uses, and the public school district), as well as representatives from other residential neighborhoods in San Bruno, and a member of the former Senior Assisted Living Site Selection Committee;

WHEREAS, the City of San Bruno, through the staff of the Community Development Department, and with the advice of the CAC, began preparation of a "Specific Plan for the U.S. Navy Site and its Environs", which contains recommendations for land use, densities of development, height of buildings and structures, design guidelines, transportation and infrastructure improvements, along with suggested implementation mechanisms; with some development standards for height of buildings and structures and construction of an above-ground parking structure, which would require voter approval under the provisions of Local Ordinance 1284;

WHEREAS, the Specific Plan presents the following vision for the U.S. Navy Site:

A compact and interactive community based on the principles of Transit-Oriented Development, offering multi-family and senior assisted living, work place opportunities, potential child-care and recreational facilities, and a major hotel and ancillary services, with convenient pedestrian-friendly access to adjacent transit facilities, retail and entertainment services, and neighborhood amenities;

WHEREAS, a Notice of Public hearing was duly posted on October 24, 2000 and November 17, 2000 for consideration of the Specific Plan and environmental review before the Planning Commission;

WHEREAS, the Planning Commission held a Public Hearing on the Specific Plan and environmental review documents on November 21, 2000 and on said date, the Public Hearing was opened, held and continued to December 5, 2000, and on said date, the Public Hearing was held and continued to December 19th, 2000, and on said date, the Public Hearing was held and closed;

WHEREAS, an Environmental Impact Report analyzing the potential significance of impacts associated with the Specific Plan has been prepared and circulated, pursuant to the requirements of the California Environmental Quality Act (hereinafter "CEQA"), the State CEQA Guidelines, City-adopted objectives and procedures for the evaluation of projects and the preparation of Environmental Impact Reports, as well as regional requirements and procedures including traffic impacts, airport-related overhead noise impacts and mitigation easements and disclosure statements, and Federal Aviation Administration (FAA) height restrictions; and

WHEREAS, on January 9, 2001, in accordance with the California Environmental Quality Act, after due study and deliberation and public hearings before both the Planning Commission and City Council, the City Council certified a Final Environmental Impact Report (Final EIR) for the U.S. Navy Site and its Environs Specific Plan and directed that a Notice of Determination be filed with the County Clerk and circulated;

WHEREAS, the Planning Commission by its Resolution No. 2000-06 recommended to the San Bruno City Council that it amend the San Bruno 1984 General Plan (as set forth in attached Exhibit "A") and to adopt the U.S. Navy Site and its Environs Specific Plan, with policies, provisions, densities of development, height standards, and land use map designations to guide future development in that portion of the City of San Bruno; and

WHEREAS, at a duly noticed public hearing on January 9, 2001, this Council considered the Planning Commission's recommendation;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of San Bruno that it hereby amends the San Bruno 1984 General Plan by adopting the U.S. Navy Site and its Environs Specific Plan, with policies, provisions, densities, heights of buildings and structures, circulation and land use map designations, as set forth in attached Exhibit "A" incorporated herein by reference.

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I hereby certify that foregoing Resolution No. 2001-2 was introduced and adopted by the San Bruno City Council at a regular meeting on January 9, 2001 by the following vote:

AYES: Councilmembers Ibarra, O'Connell, Pallas, Ruane; Mayor Franzella

NOES: None

ABSENT: None


CITY CLERK

I hereby certify this to be a full, true and correct copy of the document it puports to be, the original of which is on file in my office.

Dated: 1-11-01

City Clerk of the City of San Bruno

RESOLUTION NO. 2001-3

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO ADOPTING OF THE "U.S. NAVY SITE AND ITS ENVIRONS SPECIFIC PLAN" DATED DECEMBER 2000

WHEREAS, in November 1997 the Commanding Officer of the U.S. Navy Engineering Field Activity West (EFA West) in San Bruno announced that a significant portion of the Navy site would be disposed of as surplus property under a Relocation Asset Management Program (RAMP);

WHEREAS, on November 16, 1999, the chairman of the San Bruno Planning Commission there upon appointed a Citizens Advisory Committee (CAC) to make recommendations on a Specific Plan for the U.S. Navy Site and its Environs, with the Committee comprised of two members of the Planning Commission, stakeholders in adjacent properties (including commercial, office, church, residential uses, and the public school district), as well as representatives from other residential neighborhoods in San Bruno, and a member of the former Senior Assisted Living Site Selection Committee;

WHEREAS, the City of San Bruno, through the staff of the Community Development Department, and with the advice of the CAC, began preparation of a "Specific Plan for the U.S. Navy Site and its Environs", which contains recommendations for land use, densities of development, height of buildings and structures, design guidelines, transportation and infrastructure improvements, along with suggested implementation mechanisms; with some development standards for height of buildings and structures, and construction of an above-ground parking structure, which require voter approval under the provisions of Local Ordinance 1284;

WHEREAS, on October 26, 2000, approximately 20 acres of the U.S. Navy Site was sold at public auction through the Government Services Administration (GSA) to the Martin/Regis San Bruno Associates, L.P.;

WHEREAS, the Martin/Regis San Bruno Associates, L.P. commented on the draft Specific Plan and draft Environmental Impact Report (EIR), requesting several technical changes in the draft Specific Plan, in response these changes have been reviewed by the CAC and Planning Commission and incorporated into the final Specific Plan and Final EIR;

WHEREAS, the Peninsula Place Condominium Association commented on the draft Specific Plan and draft EIR, requesting that the portion of their site included in the Specific Plan Area be deleted from the plan area, in response, the request has been reviewed by the CAC and Planning Commission, and the area deleted from the final Specific Plan document and EIR;

Planning Commission and City Council, the City Council certified a Final Environmental Impact Report (Final EIR) for the U.S. Navy Site and its Environs Specific Plan and directed that a Notice of Determination be filed with the County Clerk and circulated; and

WHEREAS, the Planning Commission, by its Resolution No. 2000-07 hereby determined the U.S. Navy Site and its Environs Specific Plan, dated December 2000, as amended by Resolution No. 2000-07 and in accompanying documents and resolutions, to be consistent with the City of San Bruno's 1984 General Plan, and that said Planning Commission recommended to the City Council and Redevelopment Agency of said City the adoption of the U.S. Navy Site and Its Environs Specific Plan. and,

WHEREAS, at a duly noticed public hearing on January 9, 2001, this Council considered the Planning Commission's recommendation;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of San Bruno that it hereby determines the U.S. Navy Site and its Environs Specific Plan, dated December 2000, as amended by Planning Commission Resolution No. 2000-07 and in accompanying documents and resolutions, to be consistent with the City of San Bruno's 1984 General Plan, as amended;

BE IT FURTHER RESOLVED, that the City Council hereby adopts said U.S. Navy Site and its Environs Specific Plan.

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I hereby certify that foregoing Resolution No. 2001-3 was introduced and adopted by the San Bruno City Council at a regular meeting on January 9, 2001 by the following vote:

AYES: Councilmembers Ibarra, O'Connell, Pallas, Ruane; Mayor Franzella

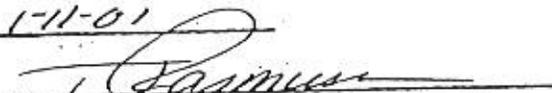
NOES: None

ABSENT: None


CITY CLERK

I hereby certify this to be a full, true and correct copy of the document it puports to be, the original of which is on file in my office.

Dated: 1-11-01


City Clerk of the City of San Bruno

**AN ORDINANCE AMENDING THE SAN BRUNO ZONING
ORDINANCE TO ESTABLISH ZONING REGULATIONS AND
DEVELOPMENT STANDARDS WITHIN THE U.S. NAVY SITE AND
ITS ENVIRONS SPECIFIC PLAN AREA**

(Land Use No. 46)

WHEREAS, an Environmental Impact Report analyzing the potential significance of impacts associated with the Specific Plan has been prepared and circulated, pursuant to the requirements of the California Environmental Quality Act (hereinafter "CEQA"), the State CEQA Guidelines, City-adopted objectives and procedures for the evaluation of projects and the preparation of Environmental Impact Reports, as well as regional requirements and procedures including traffic impacts, airport-related overhead noise impacts and mitigation easements and disclosure statements, and Federal Aviation Administration (FAA) height restrictions; and

WHEREAS, on January 9, 2001, in accordance with the California Environmental Quality Act, after due study and deliberation and public hearings before both the Planning Commission and City Council, the City Council certified a Final Environmental Impact Report (Final EIR) for the U.S. Navy Site and its Environs Specific Plan and directed that a Notice of Determination be filed with the County Clerk and circulated; and

WHEREAS, on January 9, 2001, the City Council, after due deliberation and public hearings before both the Planning Commission and City Council, adopted the U.S. Navy Site and its Environs Specific Plan and related General Plan Amendment in accordance with the San Bruno Municipal Code and the California State Government Code; and

WHEREAS, the Planning Commission by its Resolution No. 2000-08 recommended to the City Council approval of zoning change from A-R (Administrative and Research) and C-N (Neighborhood Commercial) to P-D (Planned Development) for property located on the U.S. Navy Site, the Marine Corps Reserve site, and adjacent properties, all located west of El Camino Real and North of I-380; and

WHEREAS, in accordance with the requirements of the San Bruno Zoning Ordinance, the City Council finds, after due study, deliberation and noticed public hearings, that the establishment of Zoning Regulations and Development Standards as contained the U.S. Navy Site and its Environs Specific Plan and appropriate changes to the Zoning Map from A-R (Administrative and Research) and C-N (Neighborhood Commercial) to P-D (Planned Development):

1. will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood because the planned Transit-Oriented Development, consisting of multi-family housing, specialized senior assisted-living housing, office space and

ancillary uses, hotel use with ancillary uses, general neighborhood and commercial uses, above-grade parking structure, and existing uses which are proposed to remain (including two schools, the Federal Archives building, and the U.S. Marine Reserve building) or any other subsequent uses as allowed and controlled by the San Bruno Zoning Ordinance and the General Plan as amended by the Specific Plan, would be compatible with existing businesses, schools, offices, park, residential and other uses in the vicinity;

2. will not be injurious or detrimental to property and improvement in the neighborhood or to the general welfare of the City because the uses contemplated in the U.S. Navy Site and its Environs Specific Plan would be legally established uses and should not impair the desirability of investment or occupation in the neighborhood;
3. is in general conformance with the Land Use Element of the San Bruno General Plan as amended by accompanying documents;
4. promotes public necessity, convenience and general welfare by establishing an orderly plan for the future development of this area, providing needed housing, including low-and-moderate income housing units and specialized assisted-living units for the elderly, job opportunities, and long-term economic sustainability through the generation of real estate taxes and Transit Occupancy Tax (TOT) by the flagship hotel;

WHEREAS, the City Council finds that the zoning change, with its resulting Transit-Oriented Development, is a logical and rational classification of parcels of land in this vicinity due to the location of the new BART Station approximately one third (1/3) mile to the east at Tanforan Park Shopping Center;

WHEREAS, the City Council specifically notes that the zoning on Commodore Park (020-013-030 and -040) shall remain "O" Open Space and Conservation; the Shell Gasoline Service Station (020-013-110) and the White-Ivie Animal Hospital (020-013-100) shall remain "C-N" Neighborhood Commercial; and the Peninsula Place Condominiums (020-441-000; 101-400-010 thru 480; 101-410-010 thru 480; and 101-420-010 thru 400) were removed from the Specific Plan area and remain zoned "R-4" High Density Residential;

WHEREAS, the City Council specifically acknowledges that the rezoning of the area will allow residential development within the 65+ CNEL noise contour and which must be noise insulated to meet acoustical standards established by the FAA, must have aviation easements executed in favor of the San Francisco International Airport (SFO) for all residential units (including senior assisted living units), and must have disclosure in all property sales and leases stating the fact that the property or premises is subject to adverse noise impacts from aircraft overflight noise;

WHEREAS, the City Council also specifically acknowledges that the rezoning is located within the San Bruno Redevelopment Project Area;

WHEREAS, the City Council conducted a public hearing and waived the first reading of the proposed amendments to the San Bruno Zoning Ordinance on January 9, 2001 and conducted a public hearing and waived the second reading of the proposed amendments to the San Bruno Zoning Ordinance on January 23, 2001;

The City Council of the City of San Bruno hereby ordains as follows:

Section 1. A new Chapter 12.96.200 entitled "Zoning Districts and Development Standards for the U.S. Navy Site and Its Environs Specific Plan Area" is hereby added to the City of San Bruno Zoning Ordinance to read as follows:

CHAPTER 12.96.200
ZONING REGULATIONS AND DEVELOPMENT STANDARDS FOR THE U.S. NAVY SITE AND ITS ENVIRONS SPECIFIC PLAN AREA

A. Purpose

The purposes of the establishment of Zoning Regulations and Development Standards for the U.S. Navy Site and its Environs Specific Plan area are to develop a compact and interactive community based on the principles of Transit-Oriented Development, offering multi-family and senior assisted living, work place opportunities, potential child-care and recreational facilities, and a major hotel and ancillary services, with convenient pedestrian-friendly access to adjacent transit facilities, retail and entertainment services, and neighborhood amenities.

B. Zoning Regulations and Development Standards: Establishment and Application

The zoning regulations and development standards for the U.S. Navy Site and its Environs Specific Plan Area are established as set forth in the U.S. Navy Site and its Environs Specific Plan, as adopted by the City Council of the City of San Bruno by Resolution No. 2001-02 on January 9, 2001.

Section 2. City staff is hereby directed to prepare revised City zoning maps consistent with the zoning designations set forth in this Ordinance.

Section 3. This Ordinance shall be published in accordance with applicable law, by one or more of the following methods:

(1) Posting the entire Ordinance in at least three (3) public places in the City of San Bruno, within fifteen (15) days after its passage and adoption; or

(2) Publishing the entire Ordinance at least once in the San Bruno Herald, a newspaper of general circulation published in the County and circulated in the City of San Bruno, within fifteen (15) days after its passage and adoption; or

(3) Publishing a summary of the Ordinance prepared by the City Attorney in the San Bruno Herald and posting a certified copy of the entire Ordinance in the office of the City Clerk at least five (5) days prior to passage and adoption, and a second time within fifteen (15) days after its passage and adoption, along with the names of those City Council members voting for and against the Ordinance.

Section 4. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Ordinance. The City Council of the City of San Bruno hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 5. This Ordinance shall go into effect thirty (30) days after the date of its passage and adoption.

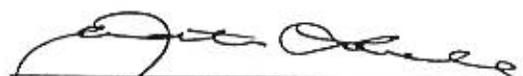
Section 6. The City Clerk shall publish this ordinance according to law.

LARRY FRANZELLA
Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

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I hereby certify that the foregoing Ordinance No. 1635 was introduced on January 9, 2001 and adopted at a regular meeting of the San Bruno City Council on January 23, 2001 by the following vote:

AYES: Councilmembers Ibarra, O'Connell, Pallas, Ruane; Mayor Franzella

NOES: None

ABSENT: None

I hereby certify this to be a full, true and correct copy of the document it reports to be, the original of which is on file in my office.


CITY CLERK

Dated: 1-26-01


City Clerk of the City of San Bruno

CITY OF SAN BRUNO

MEASURE E

To provide affordable senior housing, quality restaurant and hotel space, parks, transportation improvements, and removal of existing toxics at no cost to taxpayers, shall the height limit on the 20-acre Navy site across from Tanforan on El Camino Real be set at seven stories (90 feet) for hotel space, six stories (75 feet) for senior housing, five stories (70 feet) for apartments and offices, 35 feet for parking structure, complying with city development requirements?

FULL TEXT

INITIATIVE ORDINANCE

AN INITIATIVE ORDINANCE OF THE CITY OF SAN BRUNO ALLOWING, SUBJECT TO CITY'S DEVELOPMENT PROCESSES, CONSTRUCTION OF PRIVATELY-OWNED STRUCTURES EXCEEDING THREE STORIES, INCLUDING HOTEL, SENIOR HOUSING, APARTMENTS, OFFICES AND A 35 FOOT PARKING STRUCTURE ON PROPERTY LOCATED IN THE VICINITY OF EL CAMINO REAL AND I-380 ACROSS FROM TANFORAN PARK SHOPPING CENTER

The People of the City of San Bruno do ordain as follows:

SECTION 1: Upon appropriate application, the City of San Bruno shall have the authority to review, hold public hearings upon, deliberate upon, and approve, or deny, or modify any proposed development and inclusion of new buildings and related structures on the former Navy Site property without further voter approval, subject to the following conditions, restrictions, and parameters:

- A. Any proposed hotel structure shall not exceed a maximum of seven stories or 90 feet in height;
B. Any proposed senior housing structure shall not exceed a maximum of six stories or 75 feet in height;
C. Any proposed apartment or office structures shall not exceed a maximum of five stories or 70 feet in height;
D. Any proposed parking structure shall not exceed 35 feet in height.

SECTION 2: As used in this ordinance, the term "former Navy Site" means the area of approximately 20 acres, located within the City of San Bruno, bounded on the east by El Camino Real, on the south by I-380, across from Tanforan Park Shopping Center and made up of portions of San Mateo County Assessor's Parcel Numbers 020-013-060, 020-013-050, and 020-010-580, as more particularly described in Exhibit 1 to U.S. General Services Administration "Commodore Station Invitation for Bids for Sale of Government Real Property", circulated prior to the October 26, 2000 auction date.

SECTION 3: As used in this ordinance, the term "City of San Bruno" means the San Bruno City Council, the San Bruno Planning Commission, the Architectural Review Committee of the San Bruno Planning Commission, the San Bruno Redevelopment Agency, and any other officer or employee of the City of San Bruno, as set forth above, responsible for the approval and/or administration of projects involving physical development of real property in the City of San Bruno.

SECTION 4: In the event that any building or related structure is damaged by fire, explosion, flood, earthquake or other natural disaster or calamity, such building or related structure may be restored not to exceed the maximum permitted height or to exceed the number of stories approved by this ordinance without further voter approval, provided that any such reconstruction shall be in compliance with the applicable zoning, health and safety ordinances in effect at the time of such restoration.

SECTION 5: This ordinance constitutes an express exception to the requirements of any other ordinance of the City of San Bruno which would

otherwise require approval by the voters of the City of San Bruno prior to approval of construction of any building or structure in excess of three (3) stories or fifty (50) feet in height, construction of any multi-story parking structure, and/or maximum density of residential development for senior housing.

SECTION 6: The height and the number of stories of any building or related structure, and the definitions of the words, terms, and phrases herein, shall be governed by the edition of the Uniform Building Code most recently adopted by the City of San Bruno.

SECTION 7: Nothing in this ordinance shall be construed to except the proposed development from any requirement or procedure adopted or established by any City ordinance or resolution, or by any country or regional law or regulation, or by state law or regulation concerning the development approval process of the City of San Bruno; further, nothing in this ordinance shall be construed to require the City of San Bruno approve any such development.

SECTION 8: If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The people of the City of San Bruno hereby declare that they would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 9: Pursuant to section 15378 (b) (4) of the California code of Regulations, this initiative ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project as provided by CEQA. However, the physical development of the site is subject to review and analysis as provided by CEQA.

SECTION 10: This ordinance shall take effect as provided in section 9217 of the Elections Code of the State of California.

SECTION 11: The City Clerk shall publish this ordinance according to law.

CITY OF SAN BRUNO

IMPARTIAL ANALYSIS OF MEASURE E

This Measure was unanimously placed on the ballot by the San Bruno City Council in response to a request by the developer of the former U.S. Navy Site to seek voter approval for buildings exceeding three stories in height and a 35 foot parking structure, in accordance with City of San Bruno Ordinance No. 1284 and the recently adopted U.S. Navy Site Specific Plan.

The former U.S. Navy Site area includes 20 acres located along El Camino Real, across from Tanforan Park Shopping Center and north of I-380.

Voter approval is sought because Ordinance No. 1284, adopted by the City Council in 1977 in response to a citizens' initiative petition, requires "no building permits, grading permits or other approvals shall be issued to allow or authorize the initiation or construction of buildings, structures, land development projects or land uses," unless and until approved by the voters. Ordinance No. 1284 specifically refers to any structure over "three (3) stories or fifty (50) feet" or any "multi-story parking structures."

This Measure would allow the City, upon receipt of an appropriate application, to review, hold public hearings and deliberate upon, and approve, deny or modify any proposed development and inclusion of new buildings and related structures on the former U.S. Navy Site property without further voter approval, subject to the following conditions, restrictions and parameters:

- Any proposed hotel structure shall not exceed a maximum of seven stories or 90 feet in height;
- Any proposed Senior housing structure shall not exceed a maximum of six stories or 75 feet in height;
- Any proposed apartment or office structure shall not exceed a maximum of five stories or 70 feet in height; and
- Any proposed parking structure shall not exceed 35 feet in height.

All development proposals for the former U.S. Navy Site would be subject to the City's development approval process which requires public hearings at which citizen comments are heard, environmental and architectural review, and compliance with all zoning and building regulations, including the U.S. Navy Site Specific Plan.

As the former U.S. Navy Site is developed, the City and the Redevelopment Agency will receive increased property tax revenues. In addition, the City will receive transient occupancy (hotel) taxes.

A "yes" vote allows the City to consider an application for development of the former U.S. Navy Site, in accordance with the City's development approval process and subject to the conditions, restrictions and parameters.

A "no" vote means the City cannot consider any application for a building which exceeds three stories or 50 feet in height or for a multi-story parking structure.

This Measure would take effect if passed by a majority of the voters.

/s/ Jonathan P. Lowell
City Attorney

ARGUMENT IN FAVOR OF MEASURE E

Measure E will bring services beneficial to all San Bruno residents.

Measure E enables the construction of a transit-oriented development on the decommissioned Navy site along El Camino Real resulting in numerous services to San Bruno residents. We urge a Yes vote on Measure E.

Measure E resulted from a comprehensive planning process including many public hearings, neighborhood presentations, and extensive review from a San Bruno Citizen's Advisory Group. A specific plan was crafted responding to citizens' concerns. The community agrees that the specifics of this project make it extremely beneficial to San Bruno.

Technically, Measure E sets specific height limits for buildings in the project including:

- 75 feet or 6 stories for 200 units of senior housing;
- 90 feet or 7 stories for first-class hotel space with community meeting rooms and a high-quality restaurant;
- 70 feet or 5 stories for apartments and offices;
- 35 feet for a parking structure keeping cars off neighborhood streets.

The benefits of Measure E for San Bruno residents include:

- Affordable senior housing units;
- Nearly 2 acres of park space;
- A top-quality hotel and restaurant;
- Clean up of toxic materials at no cost to San Bruno;
- Almost \$4 million in developer-paid fees to improve streets, traffic signals, parks and schools;
- Family housing including 15% set aside for low and moderate income families;
- Yearly tax revenue of \$3 million to help pay for city services including police, fire and medical services;
- A transit-oriented project near BART – designed to minimize traffic.

A transformed Navy site and a new downtown Library will provide vital new services to San Bruno residents.

We urge you to join with us and hundreds of other San Bruno residents in voting Yes on Measure E and help us revitalize San Bruno for everyone's future.

/s/ Larry Franzella
Mayor, City of San Bruno

/s/ Teresa McIntosh
President, 5th Addition Neighborhood Association

/s/ Arland G. Sponsler
San Bruno Senior Advisory Committee Member

/s/ Theresa Cook
San Bruno Parks and Recreation Commissioner

/s/ Bob Marshall, Jr.
Co-Chair, Navy Site Citizens Advisory Committee

CITY OF SAN BRUNO

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE E

Don't be misled.

Measure E does not require development of a major hotel nor senior housing. Regardless of what anyone says, read the ballot measure. This is what you are voting on. The measure does not require anything. It simply raises the height limits.

San Bruno citizens should not raise the height limits until we get what we want.

This development will require additional municipal services. San Bruno needs a major hotel in order to generate much needed revenue to cover these services and provide vital new services to San Bruno residents. The developer will most likely build the high-rise office building and high-density apartments first since this is where the demand is. To quote Steve Padovan of the San Bruno City Planning Department, "The primary reason for office buildings is because they are the bread and butter of the developer." If we don't require the hotel and senior housing now there will be no leverage to get them in the future.

This measure does not insure the hotel or senior housing will be built.

If you want the hotel you must vote "NO"

If you want senior housing you must vote "NO"

If you want to maintain control over development of the Navy Site you must vote "NO"

NO HOTEL

NO DEAL!!!

For more information and analysis please visit
<http://hometown.aol.com/NoHtl/NoDI/NoOnE.html>

/s/ Al Watson
Citizen, San Bruno

ARGUMENT AGAINST MEASURE E

Measure E is not an issue of land use, it is an issue of leverage. The Citizens' Advisory Committee worked to develop a Specific Plan for the Navy Site, which includes a "flagship" hotel. Throughout this process, some members wanted to insure the residents of San Bruno would gain some benefit from this development and not simply get additional traffic, pollution, and high rise buildings, etc. Representatives of the City told the committee a hotel was priority and central to the Navy Site Specific Plan, that it would provide a significant financial stimulus to the City and would help offset the negative aspects of the Specific Plan. The Specific Plan, though not perfect and containing elements not particularly attractive to the intersection of Sneath Lane and El Camino Real, is essentially a good plan. Unfortunately, the City Council has provided a very weak and misleading Initiative Ordinance. Measure E does NOT REQUIRE that the hotel nor the senior housing facilities be built, it simply allows the developer to choose to build whatever they want in accordance to the new height limits listed. The Initiative Ordinance does not even reference the Specific Plan put together by your fellow citizens. The Ballot description is even misleading. Per Councilmember O'Connell, the only thing that the City will get at "No Cost" is the removal of hazardous materials. Why would we have to pay for the removal of hazardous materials on the Navy site? We voted NO on Measure C in 1999 and the City formed a Citizens' Advisory Committee. Let's vote NO now and demand the City and the developer guarantee to provide the hotel the committee agreed was necessary and the citizens were promised.

/s/ Al Watson
Citizen, San Bruno

CITY OF SAN BRUNO

REBUTTAL TO ARGUMENT AGAINST MEASURE E

Measure E is the result of a comprehensive and very public planning process, which took over 14 months involving numerous community presentations.

A Specific Plan was crafted which enables very precise uses for the Navy site affording the greatest planning guarantee possible that the projects listed will be built. This plan was overwhelmingly approved by the San Bruno Citizen's Advisory Committee and unanimously approved by the San Bruno Planning Commission and San Bruno City Council.

A Yes vote on Measure E is the only way all various buildings components, especially those most desired by San Bruno residents, can be built on the site.

The elements include:

- 200 senior housing units;
- Top-quality hotel space with community meeting rooms and first-class restaurant;
- Family apartments, including affordable units;
- Office space generating local tax revenue.

All San Bruno residents benefit from this project:

- Senior housing units available to our elderly;
- 2 acres of park space;
- Top-quality hotel space and first-class restaurant;
- Toxic materials will be cleaned up without cost to San Bruno;
- Almost \$4 million in fees will be paid to fix streets, traffic lights, parks and our local schools;
- Annual tax revenue of \$3 million will help pay for other city services including police, fire and medical.

This is a well-planned and integrated project with all details fully disclosed. Measure E ensures we get the overall project we want so all San Bruno benefits. Please join us and hundreds of your neighbors in voting Yes on Measure E.

/s/ **Jim Ruane**
Vice Mayor, City of San Bruno

/s/ **Pastor Peter Jalilie**
Member, San Bruno Ecumenical Council

/s/ **Eve Schindler**
Member, Senior Housing Site Selection Committee

/s/ **William A. Nack**
Executive Officer, Building and Construction Trades
Council of San Mateo County, AFL-CIO

/s/ **Larry Franzella**
Mayor, City of San Bruno

EXHIBIT D

FULL COPY OF ORDINANCE NO. 1653,
AUTHORIZING THIS AGREEMENT

This Development Agreement was approved by the City Council of City by Ordinance No. 1653, which was finally adopted on January 8, 2002, and became effective thirty (30) days thereafter.

ORDINANCE NO. 1653

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN BRUNO APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN BRUNO AND MARTIN/REGIS SAN BRUNO ASSOCIATES, L.P. FOR DEVELOPMENT OF "THE CROSSING|SAN BRUNO" PROJECT ON PROPERTIES ENCOMPASSED BY THE U.S. NAVY SITE AND ITS ENVIRONS SPECIFIC PLAN.

WHEREAS, California Government Code, Title 7, and Chapter 4, Article 2.5 authorizes the City of San Bruno to enter into development agreements which would provide certainty, definition and commitment to developers as well as to necessary public improvements required by development.

WHEREAS, the City of San Bruno, through the staff of the Community Development Department, and with the advice of the Citizen's Advisory Committee, began preparation of a "Specific Plan for the U.S. Navy Site and its Environs" ("Specific Plan"), which contains recommendations for land use, densities of development, height of buildings and structures, design guidelines, transportation and infrastructure improvements, along with suggested implementation mechanisms; with some development standards for height of buildings and structures, and construction of an above-ground parking structure, which require voter approval under the provisions of Local Ordinance 1284;

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) and implementing Guidelines, an Addendum to the EIR has been prepared by Environmental Science Associates because the proposed project is substantially consistent with the type and intensity of land uses analyzed in the previously certified EIR, there are no new significant impacts nor any substantial increase in the severity of previously identified significant impacts, identified with the proposed project, and the mitigation measures adopted as part of the previous EIR are also applicable to the proposed project;

WHEREAS, on November 20, 2001, the Planning Commission, after duly noticed public hearing, by Resolution 2001-5, recommended approval of the Addendum and approval of the Specific Plan amendments and on December 4, 2001, by Resolution 2001-06 recommended approval of the Development Agreement to the City Council;

WHEREAS, the draft development agreement is consistent with the Specific Plan, as amended; and the environmental impacts have been considered adequately in the Specific Plan EIR and Addendum;

WHEREAS, Martin/Regis San Bruno Associates, L.P., in conjunction with City Staff have prepared a draft development agreement in accordance with the requirements of California Government Code, Title 7, and Chapter 4, Article 2.5 and Resolution No. 1986-77, which delineates the fees to be paid, effective date and term of the agreement, permitted uses of the property, densities of uses, maximum heights and sizes of proposed buildings,

provisions for reservations and dedication of public land for public purposes, applicable rules, regulations and policies, infrastructure improvements, affordable housing, prevailing wage rules, obligations, amendments, annual review, default and other miscellaneous provisions;

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

Section 1. This Ordinance incorporates, and by this reference makes a part hereof, that certain Development Agreement, substantially in the form on file with the City Clerk (the "Development Agreement"), by and between the City of San Bruno and Martin/Regis San Bruno Associates, L.P (the "Developer"), relative to the proposed development of the properties encompassed by the U.S. Navy Site and Its Environs Specific Plan on certain real property consisting of approximately twenty (20) acres located in the City of San Bruno in the area bounded generally by Sneath Lane to the north, El Camino Real to the east, Interstate 380 to the west and Commodore Drive to the west, as shown on the "Map of the Project Site," Exhibit "A" of the Development Agreement.

Section 2. This Ordinance is adopted under the authority of Government Code Section 65864, et seq. and pursuant to the provisions of City Council Resolution No. 1986-77 establishing procedures and requirements for consideration of development agreements pursuant to Government Code Section 65864, et seq (the "Procedural Resolution").

Section 3. The City Council hereby finds and determines that the Development Agreement is consistent with the General Plan of the City of San Bruno and the U.S. Navy Site and Its Environs Specific Plan. This finding is based upon Resolution No. 2001-02 adopted by the City Council on January 9, 2001, amending the General Plan of the City of San Bruno.

Section 4. The Development Agreement is in the public interest. This finding is based on the fact that the Development Agreement will provide for a transit oriented development with residential units, senior housing, guest services and commercial space, parking and traffic improvements within the City, as well as the provision of space for child care facilities, high quality employment opportunities, the provision of affordable housing (15% of total units), the remediation of contamination on the Project Site and other economic benefits to the City.

Section 5. Based on the findings set forth in this Ordinance, Resolution No. 2001-82, and the evidence in the Staff Report, the City Council hereby approves the Development Agreement, substantially in the form on file with the City Clerk, subject to such minor and clarifying changes consistent with the terms thereof as may be approved by the City Attorney prior to execution thereof.

Section 6. The City Manager is hereby authorized and directed to execute the Development Agreement on behalf of the City of San Bruno.

Section 7. The City Manager and the Community Development Director are hereby authorized and directed to perform all acts to be performed by the City in the administration of the Development Agreement pursuant to the terms of the Development Agreement, including but not limited to conducting periodic reviews, approval of certain time extensions and transfers and assignments and the execution and issuance of an estoppel certificate as authorized therein. The City Manager and Community Development Director are further authorized and directed to perform all other acts, enter into all other agreements and execute all other documents necessary or convenient to carry out the purposes of this Ordinance and the Development Agreement.

Section 8. This Ordinance shall take effect thirty (30) days following its final passage. The City Clerk shall cause this Ordinance to be posted or published pursuant to the requirements of Government Code Section 36933.

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

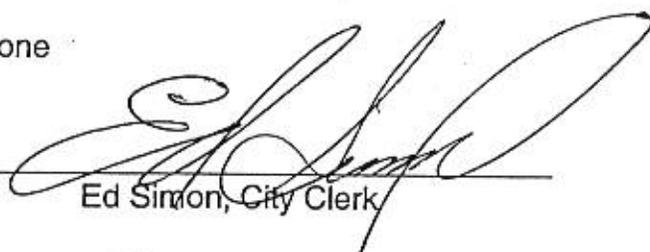
Section 10. If any part of this Ordinance, or the Development Agreement which it approves, is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance or of the Amendment, and this City Council hereby declares that it would have passed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

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I hereby certify that the foregoing Ordinance No. 1653 was introduced on December 11, 2001, and adopted at a regular meeting of the San Bruno City Council on Jan. 8, 2002, by the following vote:

AYES: COUNCILMEMBERS: Franzella, Ibarra, O'Connell, Ruane
NOES: COUNCILMEMBERS: Pallas
ABSENT: COUNCILMEMBERS: None

I hereby certify this to be a full, true and correct copy of the document it puports to be, the original of which is on file in my office.


Ed Simon, City Clerk

Dated: January 8, 2002

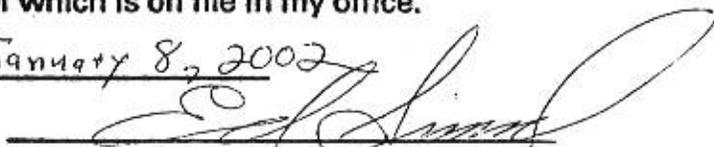

City Clerk of the City of San Bruno

EXHIBIT E

AFFORDABLE HOUSING PLAN

A. Definitions: For purposes of this Exhibit E, the following terms shall have the meaning set forth in this Paragraph "A." All other capitalized terms used herein and not otherwise defined shall have the meaning set forth in Section 1 of the Development Agreement.

(1) "Affordable For-Sale Units" means not less than fifteen percent (15%) of the total number of residential units in the Project available for sale. The Affordable For-Sale Units will be made available for sale to and occupied by Very Low, Lower and Moderate Income Households at an Affordable Housing Cost as set forth in Paragraph "C" of this Affordable Housing Plan.

(2) "Affordable Housing Cost" means the monthly housing cost, including payments for principal, interest, property taxes and insurance, which does not exceed the maximum housing cost allowed for the Affordable For-Sale Units in accordance with Section 50052.5 of the California Health & Safety Code or successor statute.

(3) "Affordable Rental Units" means not less than fifteen percent (15%) of the total number of residential rental units in the Project. The Affordable Rental Units will be made available for rent to and occupied by Very Low, Lower and Moderate Income Households at an Affordable Rent as set forth in Paragraph "B" of this Affordable Housing Plan.

(4) "Affordable Rent" means rent, including a reasonable utility allowance, that does not exceed the maximum allowable rent to be charged and paid by the Household for an Affordable Rental Unit, based upon area median income adjusted for family size appropriate to the Unit as determined and calculated pursuant to Section 50053 of the California Health & Safety Code, or successor statute.

(5) "Affordable Unit" means the Affordable For-Sale Units and the Affordable Rental Units.

(6) "County" means San Mateo County.

(7) "Household" means all persons who will occupy the Affordable Unit whether it be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements provided that all the terms and conditions set forth herein are met.

(8) "Lower Income Household" means a Household whose gross annual income does not exceed eighty percent (80%) of County median income adjusted for family size as determined by the United States Department of Housing and Urban Development, or successor agency, and as set forth by regulation of the California

Department of Housing and Community Development, pursuant to Section 50079.5 of the California Health & Safety Code.

(9) "Moderate Income Household" means a Household whose gross annual income does not exceed one hundred twenty percent (120%) of County median income adjusted for family size as determined by the United States Department of Housing and Urban Development, or successor agency, and as set forth by regulation of the California Department of Housing and Community Development, pursuant to Section 50093 of the California Health & Safety Code.

(10) "Qualified Permanent Resident" shall have the meaning as defined by Section 51.3 of the California Civil Code, or successor statute.

(11) "Senior Affordable Rental Units" means those rental units that will be made available for, restricted for, rented and occupied by Senior Citizen Households at an Affordable Rent.

(12) "Senior Citizen" means a person sixty-two (62) years of age or older or as otherwise defined by the California Health & Safety Code.

(13) "Senior Citizen Household" means a household in which at least one member is a Senior Citizen and every other member is a Qualified Permanent Resident and which household is eligible to rent an Affordable Rental Unit in the Project in accordance with this Affordable Housing Plan and the Agreement, and all applicable federal, state and local laws governing the use and occupancy of the Project.

(14) "Very Low Income Household" means a Household whose annual income does not exceed fifty percent (50%) of County median income adjusted for family size as determined by the United States Department of Housing and Urban Development, or successor agency, and as set forth by regulation of the California Department of Housing and Community Development pursuant to Section 50105 of the California Health & Safety Code.

B. Affordable Rental Units - Rent and Income Restrictions. The following restriction shall apply with respect to the Affordable Rental Units:

(1) Very Low Income Rental Units. Not less than forty percent (40%) of the Affordable Rental Units (six (6%) percent of the total rental units) shall be made available for, restricted for, rented and occupied by Very Low Income Households at an Affordable Rent.

C. Affordable For-Sale Units. The following restriction shall apply with respect to the Affordable For-Sale Units:

(1) Very Low Income For-Sale Units. Not less than forty percent (40%) of the Affordable For-Sale Units (six (6%) percent of the total for-sale units) shall be made restricted for and sold to Very Low Income Households at an Affordable Housing Cost.

D. Location of Affordable Units. Affordable Units should be included in each phase of development of the Project which includes residential components, although the developer may, at its option, either include greater than fifteen percent (15%) Affordable Units within the earlier phases of the project and fewer than fifteen percent (15%) in later phases, or sell some or all of the initial residential phases at market rate to generate sufficient sales proceeds to fund the requirements of this Affordable Housing Plan, so long as the aggregate on the Property at full build-out is at least fifteen percent (15%) and further provided no more than seventy-five percent (75%) of the Affordable Units are located on the Senior Housing Component. With the exception of the Senior Affordable Rental Units which may all be located in the Senior Housing Component, within each phase that includes Affordable Units there shall be no physical concentration of Affordable Units. The Affordable Units shall be dispersed equally throughout all buildings and all 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, whether in the Senior Housing Project Component or other residential components, shall not be identifiable 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.

E. Additional Requirements.

(1) Declaration of Covenants, Conditions and Restrictions. Prior to the issuance of a Certificate of Occupancy for any residential component of the Project, a Declaration of Covenants, Conditions and Restrictions ("CC&Rs") shall be executed and recorded which ensures the long-term affordability of the Affordable Units for a period of time not less than the duration of the Redevelopment Plan. The CC&Rs shall be in a form reasonably acceptable to the City and shall include at a minimum further information regarding income restrictions for the Affordable Units, and annual certification requirements.

(2) Marketing Plan. Prior to the rental or sale of any Affordable Unit, Martin/Regis 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 in City-sponsored newsletters, newspaper advertising in local newspapers and notices in City facilities. To the extent permitted by the law, the Marketing Plan shall include preferences for, in order of priority: a) persons who live and work in the City; b) persons who live in the City; c) employees of the City; d) persons who work in the City; e) all others.

EXHIBIT F

INSURANCE

A. INSURANCE.

1. Martin/Regis shall, at all times during the term of this Development Agreement, maintain or cause to be maintained either Comprehensive General Liability insurance or Commercial General Liability Insurance policy(ies) applying to the construction, use and occupancy of the Project, or any part thereof, or any areas adjacent thereto. Such coverage shall have a minimum combined single "per occurrence" limit of liability of at least Three Million Dollars (\$3,000,000.00), and a general aggregate limit of Five Million Dollars (\$5,000,000.00). Such insurance shall include Broad Form Contractual liability insurance coverage insuring all of the indemnity obligations of Martin/Regis under this Development Agreement. Such insurance shall also include coverage against liability for bodily injuries or property damage arising out of the use by or on behalf of Martin/Regis of any owned, non-owned or hired automotive equipment for a limit of not less than that specified above. Each policy of insurance required by this Development Agreement (other than for workers' compensation) shall name the City, its officers, agents, employees and members of its boards and commissions as additional insureds. Such insurance shall be endorsed to provide that such coverage shall be primary and that any insurance maintained by City shall be excess insurance only.

2. Martin/Regis shall provide, or cause to be provided, Workers' Compensation insurance as required by law, and shall cause its contractors, their subcontractors, agents or representatives to also maintain Workers' Compensation Insurance as required by law.

3. Policies for insurance under this Development Agreement shall contain only those deductible clauses as approved by the City Manager of City in the exercise of his reasonable discretion.

B. GENERAL REQUIREMENTS FOR INSURANCE.

1. Each policy of insurance carried by Martin/Regis shall provide that it may not be cancelled, reduced in amount or coverage or otherwise materially, adversely modified without at least thirty (30) days' prior written notice to City (or, in the use case of non-payment of premiums, such other time as may be approved by the City Manager). Martin/Regis shall furnish to City a copy of each policy of insurance carried under this Development Agreement, or a certificate that states that such insurance is in full force and effect and, in the case of the public liability insurance, shows City, its officers, agents, employees and members of its boards and commissions named as additional insureds.

2. Any insurance required to be maintained by Martin/Regis under this Development Agreement may be maintained under a so-called "blanket policy," insuring other parties and other locations, as long as the insurance amounts, coverages and protections provided by that policy are equivalent to those amounts, coverages and protections that would be provided by separate policies applicable solely to the Project.

3. All insurance provided for under this Development Agreement shall be effected under valid policies issued by insurers licensed to do business in California and rated A+XII or better in "Best's Insurance Guide." At least thirty (30) days prior to the expiration date of any policy, notice of renewal shall be delivered to City, together with satisfactory evidence of payment of the premium on the policy. Certified copies of certificates of renewal shall be delivered to the City within thirty 30 days after renewal.

4. If reasonably required by the City's City Manager, the amount of coverage for each insurance policy required under this Development Agreement shall be adjusted at least once every three (3) years from the Effective Date, by the percentage increase, if any, in the Consumer Price Index -- San Francisco Bay region, All Urban Consumers, over the preceding three (3) year period. The amount of coverage may be adjusted by City's City Manager more frequently if and when the Consumer Price Index cumulatively increases more than one hundred percent (100%) from the Effective Date of this Development Agreement.

5. All insurance required by this Exhibit F shall provide for severability of interests; shall provide that an act or omission of one of the named insureds shall not reduce or avoid coverage to the other named insured; and shall afford coverage for all claims based on acts, omissions, injury and damage, which claims occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

6. If any insurance required by this Exhibit F is not reasonably available in the commercial insurance market, then Martin/Regis shall so inform City in writing and the parties shall agree on what substitute form of insurance, if any, Martin/Regis shall provide. If the parties are unable to agree, either party may submit to arbitration pursuant to Section 12.3 of this Development Agreement the issues of whether any insurance is not reasonably available in the commercial insurance market or whether substitute insurance is available.

C. MUTUAL RELEASE.

Each party, for itself and to the extent it is legally permissible for it to do so, and without affecting the coverage provided by insurance required to be maintained by Martin/Regis, on behalf of its insurer hereby releases and waives any right to recover against the other party from any liability for (i) damages for injury to or death of persons, (ii) any loss or damage to property, (iii) any loss or damage to buildings or other improvements, or (iv) claims arising by reason of any of the foregoing, to the extent that such damages and/or claims under (i) through (iv) are covered (and only to the extent of such coverage) by insurance actually carried by each party, irrespective of any negligence on the part of such party which may have contributed to such loss or damage. The provisions of this Section C are intended to restrict each party (as

permitted by law) to recovery for loss or damage against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of the other party, any rights and/or claims that might give rise to a right of subrogation in any such insurance carrier.

D. NO SUPERSEDURE.

The provisions of this Exhibit F shall not supersede and shall be in addition to any other lawfully imposed insurance requirements.

EXHIBIT G

SAMPLE COMPLIANCE EVALUATION FORM

The Annual Compliance Evaluation Form is submitted to the City of San Bruno ("City") by Martin/Regis Associates L. P. ("Martin/Regis") pursuant to the requirements of California Government Code section 65856.1 and Resolution No. 1986-77 regarding Martin/Regis' good faith compliance with its obligations under that the Development Agreement having an Effective Date of February 7, 2002, between the City and Martin/Regis ("Development Agreement"). All terms not otherwise defined herein shall have the meanings assigned to them in the Development Agreement:

Annual Review Period: _____ to _____.

(If yes, please attach description and/or documentation)

- A Development Activities during this annual review period: Yes: ___ No: ___
- B Development Impact Fees, processing fees, architectural review fees and/or other fees paid during this annual review period: Yes: ___ No: ___
- C On- and/or off-site infrastructure improvements completed or paid for during this annual review period: Yes: ___ No: ___
- D Affordable housing units created during this annual review period:
Yes: ___ No: ___
- E Other Development Agreement obligations completed during this annual review period: Yes: ___ No: ___
- F Transfers, assignments, or dedications from or by Martin/Regis during this annual review period: Yes: ___ No: ___
- G Any breach by Martin/Regis of any of its obligations under the Development Agreement: Yes: ___ No: ___

The undersigned representative of Martin/Regis confirms that Martin/Regis is:

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

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

IN WITNESS WHEREOF, Martin/Regis has executed this Compliance Evaluation Form as of this ____ day of _____, 20__.

Martin/Regis,

By: _____

Its: _____