EXHIBIT A

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Community Development Agency
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

SAN SEBASTIAN MH GENERAL PARTNERSHIP

REGARDING

THE SAN SEBASTIAN RESIDENTIAL DEVELOPMENT PROJECT

RESIDENTIAL DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
SAN SEBASTIAN MH GENERAL PARTNERSHIP

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Morgan Hill, a California municipal corporation, (hereinafter "**City**"), and San Sebastian MH, a General Partnership, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to section 65864 *et seq*. of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code sections 65864 *et seq*. ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its Morgan Hill Municipal Code (Section 1880 *et seq*.) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. MC 11-03: Cochrane-Borello/MC 13-21: Cochrane-Borello; and MC14-12: Cochrane-Borello

2. EA 09-23: Cochrane-Borello;

3. Zoning Amendment ZA 09-08: Cochrane-Borello;

4. Subdivision SD 09-07: Cochrane-Borello;

The Existing Approvals are more particularly described in the EIR, and the resolutions adopting the Existing Approvals.

E. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

F. On February 14, 2012, February 25, 2014 & February 10, 2015, the Morgan Hill Planning Commission approved an allotment for the Project as set forth in the Developer's application for a development allotment pursuant to Chapter 18.78 of the Morgan Hill Municipal Code ("**Residential Development Control System", or "RDCS"**). This Agreement serves to secure in a permanent and enforceable manner the public benefits included in the Developer's application as required under Section 18.78.060A of Chapter 18.78 of the Code.

G. On February 12, 2013, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**"), the hearing body for purposes of the Development Agreement Statute and the Enabling Ordinance, adopted Resolutions that affirmed CEQA compliance for this Agreement, adopted findings that this Agreement is consistent with the City's General Plan and the Existing Approvals and recommended that this Agreement be approved by the City Council.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. On February 27, 2013, following a duly noticed and conducted public hearing, the Morgan Hill City Council ("City Council") introduced Ordinance No. 2065, an ordinance that affirms CEQA compliance that adopts findings that this Agreement is consistent with the City's General Plan and the Existing Approvals, that approves this Agreement, and that directs this Agreement's execution by City ("Approving Ordinance"). The City adopted the Approving Ordinance on March 27, 2013, the Approving Ordinance became effective thirty (30) days later, and the Parties signed the Agreement. The "Effective Date" in this Agreement shall be the date that the Approving Ordinance became effective.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

(1) "**Applicable Law**" shall have that meaning set forth in Section 2.01(a) of this Agreement.

(2) "**Existing Approvals**" shall have that meaning set forth in Recital paragraph D of this Agreement.

(3) "**Existing City Laws**" shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, RDCS, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.

(4) "**Impact Fees**" shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.

(5) "**Legal Effect**" shall mean the ordinance, resolution, permit, license or other grant of approval has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

(6) "**New City Laws**" shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes "**Legal Effect**" after the Effective Date of this Agreement, and that applies City wide.

(7) "**Project**" shall mean the development containing 244 single family residential units as more particularly described in the Environmental Impact Report titled Cochrane-Borello, dated August 2012 Any reference in this Agreement to the "Project" shall mean and include the "Property,"; provided however, that the Project to which this Agreement applies may be only occupy a part of the Property and may be only a phase of a larger development on the Property.

(8) "**Project Approvals"** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.

(9) "**Property**" shall mean that certain real property consisting of approximately 122 acres located within the City, as more particularly described and shown on ***Exhibit A*** to this Agreement.

(10) "**RDCS"** means the Residential Development Control System set forth in Chapter 18.78 of the Morgan Hill Municipal Code.

(11) "**Second Notice"** shall have that meaning set forth in Section 4.07(c) of this Agreement.

(12) "**Subdivision Document**" means, pursuant to Government Code section 66452.6(a) and this Agreement, the term of any tentative map, vesting tentative map,

parcel map, vesting parcel map, final map or vesting final maps, or any such new map or any amendment to any such map, or any re-subdivision.

(13) "**Subsequent Approvals**" a**nd "Subsequent Approval**" mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Approving Ordinance (defined below), including without limitation, a City Resolution of Application for Annexation and subdivision maps and any Subdivision Document.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law.

1.03 Term/Subdivision Documents.

(a) The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated, modified or extended as provided in this Agreement) until the earliest of (1) the loss of all development allocation for the Project under the RDCS, if applicable, (2) the issuance of a certification of occupancy for all units in the Project or (3) ten (10) years plus one day after the Effective Date; provided however that Developer's obligations under Sections 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement.

(b) Any Subdivision Document relating to the Project shall automatically be extended to and until the end of the Term of this Agreement. The termination of this Agreement shall have no effect on the remaining term of a Subdivision Document that has not yet expired. Any improvement agreement entered into pursuant to the Subdivision Map Act (Gov. Code §§ 66410 *et seq*.) or other State or local regulation shall have that term determined by City. If this Agreement terminates for any reason prior to the expiration of vested rights otherwise given under the Subdivision Map Act to any vesting tentative map, vesting parcel map, vesting final map or any other type of vesting map on the Property (or any portion of the Property) (collectively, "**Vesting Map**"), such Vesting Map approved during the Term of this Agreement shall NOT extend the Applicable Law beyond the stated Term of this Agreement and the City rules, regulations and official policies applicable to that portion of the Property covered by such Vesting Map shall become those City rules, regulations and official policies in effect as of the date of the termination of this Agreement; provided, however, that City and Developer may agree to an extension of the Term of this Agreement with respect to the area covered by any such Vesting Map.

(c) If any "**Third Party Challenge**" (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment ("**Litigation Tolling**"). Notwithstanding the foregoing, regardless of the number of Third Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third Party Challenge shall not delay or stop the development, processing or

construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "**Applicable Law**" shall mean all of the items listed below in this Section 2.01, subject only to the conditions set forth in Section 2.02(c) of this Agreement. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

(1) All the provisions, terms and conditions of this Agreement.

(2) The Existing Approvals. Developer hereby waives any legal or equitable right to challenge administratively or judicially any Existing Approvals including conditions of those Existing Approvals. Such waiver includes any requirements for notice, acts of protest and/or right to litigation pursuant to the Mitigation Fee Act and/or any other applicable law.

(3) The Subsequent Approvals, provided such Subsequent Approvals are:

(i) In compliance with all controlling California law;
(ii) Mutually agreed to by the Parties; and
(iii) Duly enacted by City.

(4) The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.

(5) Any "New City Laws" Developer is subject to under this Agreement; for example, as provided in, but not limited to, Section 2.09. Additionally, any New City Laws to which Developer elects to be subject pursuant to Section 2.09(e).

(b) The Parties acknowledge that the Subsequent Approvals may be processed in stages and therefore one or more Subsequent Approvals may be adopted and approved before other Subsequent Approvals needed for development of the Project are adopted and approved by City.

(c) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents

assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

(d) Nothing contained herein will give Developer a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(e) Nothing contained herein will give Developer a vested right to develop the described Project absent valid and unexpired development allocations under the RDCS.

2.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law. Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(b) Under this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law pursuant to this Agreement.

(c) If the RDCS is applicable to the Project or any portion thereof, the vested rights to develop the Project according with Applicable Law and this Agreement shall be vested only to those residential units having a RDCS allotment. If the Project defined in this Agreement includes units that have not been awarded RDCS allotments ("Pending Units"), the RDCS allotments for the Pending Units shall be a necessary Subsequent Approval and this Agreement shall be amended to reflect the application and conditions attaching to the RDCS allotments for the Pending Units.

(d) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable city, state or federal law.

2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Project (and the Developer who is the owner of same). Such Project Mitigation may be conditions of any

Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04 and as part of the Project's sole and exclusive obligation (and the Developer's as the owner of same) to cover Project Mitigation, Developer shall pay all Impact Fees and in the amounts in legal effect at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code.

(c) Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, the Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, environmental studies required under CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully cove**r**ed by the Project (including Developer as owner of same). Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.04 RDCS and Other Specific Project-Specific Requirements.

(a) The following specific requirements set forth in Exhibit C are voluntarily assumed by Developer in return for benefits derived from the City's RDCS building allotment approval program. These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement or otherwise imposed to mitigate impacts of the Project. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or

prohibition under otherwise applicable city, state or federal law and waives any such right to credit, refund, reimbursement or prohibition. Instead, these requirements are voluntarily assumed by Developer in return for benefits derived from the RDCS. For example, under the RDCS, awarding of residential allotments to new development is a competitive process based on a point system. Additional points can be awarded to a development proposal that is willing to pay fees in addition to those already required to mitigate its impacts. The payment of these additional fees results in additional points being awarded to the development proposal under the RDCS, thereby allowing the development proposal to secure a higher score under the RDCS, which in turn may provide a high enough score for the development proposal to secure allotments. The obligation that results (to pay such additional fees and to otherwise abide by the requirements derived from that RDCS process in return for additional points under the RDCS) are enforced through this Agreement.

(b) The Developer's RDCS applications MC 11-03: Cochrane-Borello allocations approved February 14, 2012, MC 13-21 Cochrane-Borello allocations approved February 25, 2014, MC 14-12: Cochrane-Borello allocations approved February 10, 2015 and approval actions (as reflected in the official records, including agendas and minutes of the City Planning Commission and City Council) shall be incorporated into this Agreement; provided however, the Project under this Agreement may constitute only part of the development or Property to which said RCDS application and approvals apply and cover only part of the allotments awarded to the Property or development. Attachment A identifies the portion of the Property, the phase of the development and the number of allotments that the Project and this Agreement covers. If this Agreement covers multiple phases of a development on the Property, then Attachment also identifies the phase during which each of the specific requirements shall apply.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

(a) Securing Building Permits and Beginning Construction. Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes and the RDCS, if applicable, as these exist on the Effective Date. In the event Developer fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the RDCS, the RDCS allotment shall expire pursuant to Section 18.78.125 of Chapter 18.78 of the Morgan Hill Municipal Code.

(b) Progress Reports Until Construction of Project is Complete. Developer shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Developer agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units in the Project, the City shall provide Developers with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units of the Project, this Development Agreement shall be deemed terminated as to the entire Project.

2.07 Improvements.

In any instance where Developer is required to install improvements (including those set forth in Exhibit C), Developer shall obtain City approval of the plans and specifications and the timing and manner of the installation of improvements, and provided Developer has supplied all information required by City, City shall review and act on the application for such approval with good faith and in a reasonable manner. Where the actual cost of any improvement exceed Developer's estimated cost or commitment, Developer shall be solely responsible for all improvements costs in excess of those approved by City unless otherwise provided for in a reimbursement agreement.

2.08 Overcapacity, Oversizing.

(a) City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and services outside of the Project ("**Oversizing**"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(b) Unless no credit or reimbursement is owed to Developer pursuant to Section 2.04 of this Agreement, Developer's right to receive credits and reimbursements for Oversizing or excessive payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes,

nor otherwise reduces the development rights or assurances provided by this Agreement. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals and the Subsequent Approvals (as and when they are issued);

(5) Limit the processing of Subsequent Approvals.

(c) If City determines that it has the right under this Agreement to impose/apply a New City Law on the Property/Project, it shall send written notice to Developer of that City determination (**"Notice of New City Law"**). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("**City Response**") within thirty (30) days of receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply the New City Law to the Project. Thereafter, the Parties shall meet and

confer within thirty (30) days of the date of Developer's receipt of the City Response (the "**Meet and Confer Period**") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (*e.g.*, City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regard to all other areas of City (excluding the Project).

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations under this Agreement, including without limitation Developer's obligations of full "Project Mitigation" under Section 2.03 or the "RDCS and Other Project Specific Requirement" under Section 2.04. Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level) ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute concerning property located in a flood hazard zone (Gov. Code § 65865.5), or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

EXHIBIT A

ARTICLE 3
PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. For any Subsequent Approvals necessary for the Project, this Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later included into this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including proper Planning and Zoning Law and CEQA compliance), have secured approval of the Parties, and are adopted/approved by City, which shall retain all lawful discretion in this regard. That public review process is ongoing, and following the City's adoption of this Agreement, that public review process shall continue. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law.

(b) Upon submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to acting on the requested Subsequent Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested approval to the extent that it is consistent with Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Administrative Amendments.

(a) Upon the written request of Developer for an amendment or modification of this Agreement or a Project Approval, the City Manager or his designee shall determine: (1) whether the requested amendment or modification is minor; and (2) whether the requested amendment or modification is consistent with this Agreement and the Applicable Law. If the city manager or his designee finds that the proposed amendment or modification is both minor and consistent with this Agreement and the Applicable Law, the City Manager or his designee may approve the proposed amendment or modification without notice and public hearing. Such minor amendments or modifications approved pursuant to this Section shall not constitute subsequent discretionary approvals subject to further CEQA review. Any minor amendment must be made in writing signed by the City Manager (and approved by the City Attorney) of the City and by the Developer. After approval and signatures from the City Manager and the Developer, the amendment shall be recorded with the Santa Clara county recorder.

(b) For the purpose of this Agreement, a minor amendment shall include any extension, postponement or amendment of the time for commencement of construction of the Project that is concurrent and to the same extent as the time extension granted pursuant to an "exception to the loss of allotment" granted by the City council pursuant to Section 18.78.125 of Chapter 18.78 of the Morgan Hill Municipal Code.

(c) A "minor amendment" shall not include any of the following:

(i) Any material amendment or modification, or elimination of provisions required pursuant to the Morgan Hill Municipal Code and California Government Code Section 65865.2, or its successor legislation, including provisions relating to: (1) the duration or term of this Agreement, (2) the permitted uses of the subject property, (3) the density or intensity of uses, (4) the maximum height and size of proposed buildings, (5) provisions for reservation or dedication of land for public purposes, (6) general location of the uses or proposed buildings or (7) the relation of the project to adjacent properties; or

(ii) Any material amendment or modification, or eliminations of provisions set forth in Article 2 of this Agreement or Exhibit C to this Agreement or any reduction in fees or Project Mitigations hereunder.

3.04 Amendments.

Any request by Developer for an amendment or modification to this Agreement or a Project Approval that is determined to be not minor by the City Manager or his designee shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved.

EXHIBIT A

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagee (as that term is defined in Section 4.10(a)) following written notice of such failure from the other Party (unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default under this Agreement ("**Default**"). Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagee), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagee). If the alleged failure is cured, then no Default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist under this Agreement and the non-defaulting Party may exercise any of the remedies available under this Article.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder, to the maximum extent practicable in light of the disputed matter and pending its resolution or formal termination of the Agreement as provided herein.

(b) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to an alleged default of Developer hereunder.

4.03 Resolution of Disputes.

(a) In the event either Party is in default under the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action under this Agreement, any City Council determination under this Agreement shall be deemed a final agency action.

(c) The Parties agree to meet and confer regarding any dispute, in an effort to agree on utilizing Judicial Arbitration Mediation Services ("**JAMS**") for Alternative Dispute Resolution ("**ADR**"). However, no party shall be required to use JAMS or ADR.

4.04 Periodic Review.

(a) The City shall review this Agreement at least four times per year and on a schedule to assure compliance with the RDCS, at which time the Developer is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded under the RDCS.

4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.06 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review under CEQA ("**Third Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall have the option to defend such Third Party Challenge or to tender the complete defense of such Third Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorneys fees and costs (including related court costs).

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the

appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City's approval of a proposed assignment or transfer shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall specify the portion of the Project or Property and the rights assigned and obligations assumed, and shall be approved by the City Attorney. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations under this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney.

(b) Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests under this Agreement, Developer shall be released from its obligations with respect to the Property/Project (or any portion thereof), and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights or obligations hereunder with respect to the assigned portion of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

(c) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, 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 Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project ("**Consumer"**) unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.09 Encumbrances on the Property.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project. Mortgagee may require certain modifications to this Agreement, and City shall negotiate in good faith any such request for modification or subordination.

4.10 Obligations and Rights of Mortgage Lenders.

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("**Mortgagee**"), shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

(b) Each Mortgagee shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer under this Agreement, provided such Mortgagee has informed City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief under any chapter of Title 11 of the United States Code (the "**Bankruptcy Code**"), the cure periods provided for a Mortgagee in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay under Bankruptcy Code section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Mortgagee's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Mortgagee relief from the automatic stay. Each Mortgagee shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the

automatic stay of section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

(c) Any Mortgagee who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section 4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer under this Agreement.

(d) Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.11 Compliance with Government Code Section 65867.5.

In accordance with the requirements of Government Code section 65867.5, City and Developer agree that any tentative subdivision map(s) for the Project is hereby made subject to a condition that a sufficient water supply shall be available. Proof of the availability of a sufficient water supply shall be secured in accordance with the provisions of Government Code section 66473.7.

4.12 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law. As Subsequent Approvals are adopted and therefore become part of the Applicable Law, the Subsequent Approvals will refine the permitted

uses, density and/or intensity of use, maximum height and size of buildings and other structures, provisions for reservation or dedication of land, and other terms and conditions applicable to the Project.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced under or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer’s indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed under this agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:

Per Occurrence $2,000,000

Limit of Liability for Property Damage:

Aggregate Liability for Loss $2,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed under this agreement and before permitting any Contractor or Subcontractors to perform work under this agreement, the Subdivider shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Subdivider as it may be applied to the Contractor's or Subcontractor's work.

(f) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(g) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective Party as follows:

If to City:
City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271
Tel: (408) 779-7259
Fax: (408) 779-3117

With a Copy To:
City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271
Fax: (408) 779-1592

If to Developer:
Attn: Chris Borello
San Sebastian Homes
P. O. Box 2107
Morgan Hill, CA 95038

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(h) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(i) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(j) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California.

(k) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(l) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(m) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

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

Exhibit A ***Description of Project***

Exhibit B ***Legal Description of Lot on Which Project is to be Located***

Exhibit C ***Project Requirements and Commitment (including RDCS)***

Exhibit D ***Development Schedule***

5.02 Limitations on Time to Challenge Validity of this Agreement. Developer shall have ninety (90) days from the date that the City Council approved this Agreement to commence and affect service of summons of any action or proceeding to attack, review, set aside, void or annul this Agreement or any part of this Agreement. Thereafter, all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the decision of the proceedings, acts or determinations, including any provision of this Agreement or the enforcement hereof.

5.03 Notice of 90-day Right to Protest. Developer is hereby notified that Developer shall have ninety (90) days from the date of the imposition of any fees, dedications, reservations, or other exactions, to file a protest of the imposition of any such fees, dedications, reservations or other exactions; provided however that any challenge to the validity of any provisions of this Agreement, including Project Mitigations, or any RDCS or Project Specific Requirements, shall be subject to Section 5.02 and that this notice of the right to protest shall not supplant, extend or start anew any protest period already commenced pursuant to previous notices.

EXHIBIT A

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

s/_____

_____

City Manager

Date: _____

Attest:

s/_____

_____

Deputy City Clerk

Approved as to Form:

s/_____

_____

Interim City Attorney
Date: _____

DEVELOPER:

_____

s/_____

_____

Name/Title [print]

Corporate entities must provide a second signature:

s/_____

_____

Name/Title [print]

Date: _____

_____

(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY, MUST BE ACKNOWLEDGED BY A NOTARY)

EXHIBIT A

DESCRIPTION OF PROJECT:

AS FOUND IN APPLICATIONS MC 11-03/ MC 13-21/MC 14-12: Cochrane-Borello AND AS DESCRIBED IN THE EIR FOR COCHRANE-BORELLO DATED AUGUST 2012 AND FINAL EIR DATED JANUARY 2013

EXHIBIT B

LEGAL DESCRIPTION

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

Beginning at a point on the Southeasterly line of the Laguna Seca Rancho at the most Southerly corner of the 300 Acre Tract of Land described in the Deed from Jose Jesus Bernal and Susana Gulnac de Bernal to Alvora Cottle, dated November 8, 1862, and recorded November 10, 1862, in Book "Q" of Deeds, at Page 157, said Point of Beginning being marked by an Old stake "E"; thence running along the Southwesterly line of said 300 Acre Tract of Land and along the center line of Peet Road, N. 65 deg 09' W. 27.01 chains to a picket marked M.H.F. and 1 1/2 inch iron pipe five feet long driven along side at the most Southerly corner of the 112.68 Acre Tract of Land described in the Deed from Alvora Cottle, et ux, to Simon Mathews, dated August 13, 1867, and recorded August 20, 1867, in Book "Z" of Deeds, at Page 88; thence running N 15 deg 14' E. and along said line 46.84 chains to an old stake in mound of cobbles marked M.P.2 and from which a live oak 24" in diameter bears N 17 deg 34' W. 0.40 chains and sycamore 12" in diameter bears N 31 deg 30' W. 0.34 chains; thence N. 52 deg 46' W. 3.58 chains to a stake marked P.M. standing in the Northeasterly line of the 635.20 Acre Tract of Land conveyed by Cesar Piatti, et ux, to Jose Jesus Bernal by Deed dated January 31, 1861, and recorded February 4, 1861, in Book "O" of Deeds, at Page 35, records of said County of Santa Clara, and from which stake P.E. a sycamore 8" in diameter bears S 20 deg 35' E. 0.27 chains distant; thence along said line of said 635.20 Acre Tract, S. 68 deg 53' E. 14.087 chains to a point in said line that is distant S. 69 deg 07 W. 515.68 feet and N. 68 deg 53' W. 167.83 feet measured along the Northerly line of said 635.20 Acre Tract from the Northeasterly corner of the aforementioned 300 Acre Tract; thence S 15 deg 02' E. 176.88 feet to a 3/4" iron pipe, S 15 deg 05' W. 527.90 feet to a 3/4" iron pipe and S. 75 deg 43' E. 967.94 feet to a point in a line that is parallel with the Westerly line of the Coyote Road and distant Westerly at right angles 1.32 feet therefom; thence along said parallel line S 11 deg 17' E. 24.04 chains to a point in the Southeasterly line of the Laguna Seca Rancho; thence along said line S. 46 deg 20' W. 22.94 chains to the Point of Beginning, and being a portion of the Rancho Laguna Seca and being a part of that 156.92 Acre Tract of Land as laid down, designated and delineated upon the Map of the Survey of the formerly Phegley Home Ranch in the Rancho Laguna Seca, and which said Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, in Book "F2" of Maps, at Page 28.

Excepting therefrom the Parcel of property bounded by a line beginning at an iron pipe set at the Point of Intersection of the Southwesterly line of Cochran Road, formerly Coyote Road, 40 feet wide, with the Southerly line of that certain 14.31 Acre Tract of Land described in the Deed from Katherine Garnett Rhoades, also known as Katherine G. Rhoadens, to Harold E. Thomas, et ux, dated March 12, 1945; and recorded March 14, 1945, in Book 1249 of Official Records, Page 108; thence along said line of Cochran Road, formerly Coyote Road, S. 11 deg 17' E. 232.34 feet to an iron pipe; thence leaving said line of Cochran Road and running at right angles thereto, S. 78 deg 43' W. 170.0 feet to an iron pipe; thence at right angles, and parallel with said line of Cochran Road, N. 11 deg 17' W. 311.73 feet to an iron pipe set on the Southerly line of said 14.31 Acre Tract; thence along said Southerly line of said 14.31 Acre Tract, S. 76 deg 15' E. 187.63 feet to the Point of Beginning and being a portion of the Rancho Laguna Seca. Being designated upon the Map of the Record of Survey, which was filed for record on February 27, 1958, in Book 91 of Maps, at Page 13, Records of Santa Clara County, California.

Also excepting that portion of Said Land conveyed to the County of Santa Clara, instrument recorded March 23, 1954 in Book 2839, Page 377, Official Records.

Also excepting therefrom that portion of Said Land conveyed to the Santa Clara Valley Water Conservation District by Deed recorded March 23, 1960 in Book 4737, Page 109, Official Records.

Also excepting therefrom that portion of Said Land conveyed to the United States of America, by Deed recorded December 28, 1984 in Book J145, Page 391, Official Records.

Also excepting therefrom that portion of Said Land conveyed to the United States of America by Deed recorded February 15, 1985 in Book J251, Page 392, Official Records.

Also excepting therefrom that portion of Said Land conveyed to the Santa Clara Valley Water District by Deed recorded May 17, 1985 in Book J349, Page 325, Official Records.

Also excepting therefrom that portion of Said Land conveyed to the Santa Clara Valley Water District by Deed recorded May 17, 1985 in Book J349 Page 328, Official Records.

PARCEL TWO:

Together with those certain rights and interests reserved and described in that certain Deed executed by Katherine Garnett Rhoades, also known as Katherine G. Rhoades, in favor of Sebastian G. Borello and Luigia Borello, Husband and Wife, As Joint Tenants, recorded March 5, 1945 in Book 1250 Page 75, Official Records.

Also together with those certain rights to irrigation facilities and appurtenances thereto, which rights were reserved in that certain Deed executed by S. G. Borello & Sons, Inc., a Corporation, in favor of the Santa Clara Valley Water Conservation District, recorded March 23, 1960 in Book 4737, Page 109, Official Records.

Also together with those certain rights and interests reserved in that certain Deed executed by S. G. Borello & Sons, Inc., a Corporation, in favor of the United States of America, recorded December 28, 1984 in Book J145, Page 391, Official Records.

Also together with those certain rights reserved in that certain Deed executed by S. G. Borello & Sons, Inc., in favor of the Santa Clara Valley Water District, recorded May 17, 1985 in Book J349, Page 328, Official Records.

"Note: Parcel Two herein described is being included so as to avoid Chicago Title being the cause of excluding it from conveyances. Said parcel is not insured even though it may be included as part of the legal description of the land described in any policy."

Assessor's Parcel No. 728-34-027

EXHIBIT C

SPECIFIC RESTRICTIONS AND REQUIREMENTS

The following restriction and requirements apply to Phase 1 (23, FY 10-11 allocations) Phase 2, (37 FY 11-12 allocations), Phase 3, (15 FY 13-14 allocations) Phase 4, 20 FY 14-15 and Phase 5 25, (FY 2015-16) allocations of the Development proposed in the following respective RDCS applications MC 08-16: Peet-Borello, MC 09-04: Cochrane-Borello, MC 11-03: Cochrane-Borello MC 12-07: Cochrane-Borello and MC 13-12: Cochrane-Borello and shall apply to that portion of the Property included in the said phases of the development on the Property. Certain of the restrictions and requirements may be a partial allocation of the total requirements the Developer has committed as conditions of the total RDCS allocations awarded to the entire Project. The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are **IN ADDITION** to any mitigation requirements under CEQA, impact fee, in-lieu fees or other requirements under federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

*Estimated costs are estimates and may require augmentation for the completion of improvements. Impact fees are subject to the provisions of Section 2.03 (b) of this Agreement.

Municipal Code Reference	**Description of Requirement**	**Time of Implementation (specify date or phase #)**	**Estimated Cost or Fee Amount***
18.78.210	**Schools**		
1. Developer fees	Commit to payment of district adopted developer fees as provided by the Leroy F. Green School Facilities Act of 1988.		
3. Off-site pedestrian safety improvements	**MC 11-03:** Applicant will provide off-site pedestrian safety improvements or traffic safety improvements near or on a MHUSD school site valued at ($825 X 5 = $4,125) $4,125 dollars per unit or pay an in lieu fee equal to $4,125 dollars per unit or develop any other improvements valued at $4,125 dollars per unit to be determined by the MHUSD.	FY 13-14 allocations	$4,125/unit

3. Off-site pedestrian safety improvements	Project commits to provide safe walking improvements as designated by MHUSD and the City of Morgan Hill Public Works Department. Said fee shall not exceed $4,125 dollars per unit. **MC 13-21 and MC 14-12:** Will provide off-site pedestrian safety improvements or traffic safety improvements near or on a MHUSD school site valued at ($825 X 5 = $4,125) $4,125 dollars per unit or pay an in lieu fee equal to $4,125 dollars per unit or develop any other improvements valued at $4,125 dollars per unit to be determined by the MHUSD.	FY 15-16 & FY 2016-17 allocations	$4,125/unit
18.78.220	**Open Space**		
1.a Open space buffer	**MC 11-03/ MC 13-21 and MC 14-12:** Applicant commits to providing a minimum 10ft buffer in excess to the standard along Peet Rd (arterial). Minimum setback for fence/wall on side yard is 15ft (20ft average). For front yard, minimum 30ft.		
1.b Common useable open space	**MC 11-03 and MC 14-12:** Private open space areas and amenities are to be maintained by a Homeowners Association.		
1.c Convenient access to parks	**MC 11-03/MC 13-21 and MC 14-12:** Applicant to provide a minimum 7ft wide pedestrian/bicycle pathway in areas no less than 20ft wide with an average of 30ft wide. Cannot be redundant of public sidewalks and will provide convenient direct and safe access to the centrally located park.		

1.d Accessibility to parks/open space	**MC 11-03/ MC 13-21 and MC 14-12:** For consistency with prior scoring of application, applicant will provide minimum 7ft wide pathway in area no less than 20ft wide. Pathway will provide access through SCVWD property to "The Ranch at Alicante" subdivision which has pathway that provides better access to Coyote Creek Park on north side of Cochrane Rd.		
2. Percentage of buildings Ratio to open space	**MC 11-03:** Provides less than 20% building coverage. **MC 13-21 and MC 14-12:** Provides less than 24% building coverage	FY 13-14 allocations FY 15-16 and FY 16-17 allocations	
4. Transfer Development Credit (TDC)	**MC 11-03/MC 13-21 and MC 14-12:** Applicant commits to purchase TDC's at a ratio of one TDC for every twenty units in project.	Paid prior to certificate of occupancy	
18.78.240	**Public Facilities**		
2.a Grids water mains to existing system 2.a Grids water mains to existing system	**MC 11-03/ MC 13-21 and MC 14-12:** Project proposes to grid water in future phases Peet to Cochrane.	FY 13-14/ /FY 15-16 allocations	
2.b Design consistent with city storm drain system	**MC 11-03/MC 13-21 and MC 14-12:** Drainage concept will be consistent with City's Storm drain system (e.g., the City Storm Drainage Master Plan, local area storm drain system):		

2.c Location of storm drain lines	**MC 11-03/ MC 13-21 and MC 14-12:** All Storm drain lines will be constructed entirely within the paved area of the street (curb to curb), or in a location acceptable to the Director of Public Works. Public Storm Drain Lines that are to be maintained by the City shall be constructed within a paved area or a location acceptable to the Director of Public Works.		
2.d Design of on-site detention/retention pond	**MC 11-03/MC 13-21 and MC 14-12:** Applicant will provide an oversized detention pond along Cochrane Road. Oversized detention ponds shall be provided because the adjacent Alicante Ranch project cannot accept any additional flows. Additional storage capacity shall be provided at the direction of the Director of Public Works.		
2.f Provides public improvements	**MC 11-03/MC 13-21 and MC 14-12:** Will provide public facilities, off site storm drainage or pedestrian improvements from a City approved list at a rate of $4400/unit per stated requirements.	FY 13-14 & FY 15-16 and FY 16-17 allocations	$4,400.00/unit
2.g Contribution to RDCS Capital Improvements fund	**MC 11-03:** Applicant will contribute $1,100 per unit to the RDCS Capital Improvement Program Fund:	FY 13-14 allocations	$1,100 per unit
18.78.250	**Parks and Paths**		
2. Amenities	**MC 11-03/ MC 13-21 and MC 14-12:** Swimming Pool Restroom Area Tot Lot Tennis Court Recreation Hall		

	Exercise Room Cabana/Shade Trellis 1/2 Court Basketball Court		
3. Bike paths/equestrian trails	**MC 11-03/ MC 13-21 and MC 14-12:** Applicant commits to the criteria above and agrees to install 6.1 Miles of Class II Bike Lanes where required by the 2008 Bicycle Master Plan (244/10*0.25)=6.1 Miles. (1 Mile = 5280 ft.) Applicant commits to a total of 32,208 Linear Feet of Class II bike lane improvements.		
5. Neighborhood park	**MC 11-03/ MC 13-21:** Project will provide 3.5 acre open space/park plus provide public pathways to link all the open space areas to the pathway system within the adjacent developments.		
6. Lesser of Double standard park impact fees in effect (State Amount)	**MC 11-03 and MC 14-12**: Applicant agrees to pay the lesser of double the required in-lieu park fees or $1,100 per unit.	FY 13-14 & FY 16-17 allocations	$1,100/unit
18.78.260	**Housing Needs**		
B1 15% Secondary Dwellings	**MC 11-03/ MC 13-21 and MC 14-12:** The developer to providing a minimum of **15**% secondary units for the entire project.		
2a Standard Housing Fees	**MC 11-03/ MC 13-21 and MC 14-12:** Commits to payment of double the current standard housing fee ($150,000 X 2 = $300,000) computed at 8% of the total units.		
18.78.270	**Housing Types**		
1. Diversity of types and categories	**MC 11-03/ MC 13-21 and MC 14-12:** Applicant is committing to provide 15% sf detached, 15% secondary dwelling units, and 15% single story sf units.		

3. Variation of sizes	**MC 11-03/ MC 13-21 and MC 14-12:** The project will provide for a variation of housing sizes within the project. The proposed project provides at least a fifty percent variation in house size from the smallest to largest floor plan and each house size represents at least ten percent of the total units. (three points) For purposes of making the above determination, there must be at least three (3) different floor plans and there must be a two hundred square foot difference between the size of each floor plan (less than two hundred square feet difference will be aggregated as one floor plan).		
4. Visitability accessible units	**MC 11-03/ MC 13-21 and MC 14-12:** The project will provide at least 25 percent of the dwellings as visitability accessible units will be awarded one point. Visitability units are accessible dwellings that have one zero-step entrance on an accessible route; all main floor interiors, including bathrooms, with 32 inches of clear passage space; and at least a half-bath on the main floor usable for a person in a wheelchair.		
18.78.280	**Quality of Construction**		
1. Conservation of resources	**MC 11-03:** The following improvements shall be included in each homes: • Recycling center built in to cabinet layout with pull out bins. • Noncombustible siding. • 5/8 sheet rock in all interior bathroom. • Appliances shall be Energy Star rated. • Full exterior OSB/Plywood wrap with window/door flashing. • 5/8" Type "X" sheetrock in all interior walls. • Mud room from garage into home on 30% of homes.		

	MC 13-21: The following improvements shall be included in each homes: • Full exterior OSB/Plywood wrap with window/door flashing. • 5/8" Type "X" sheetrock in all interior walls. • Mud room from garage into home on 30% of homes • Recycle center built in to cabinet layout with pull outs for bins. • Noncombustible Siding and roofing Materials except for window, fascia and door trim on all homes. • Energy Star rated fresh air exhausts system in home. **MC 14-12: The following improvements shall be included in each homes:** • **Full exterior OSB/Plywood wrap with window/door flashing.** • **Installation of light weight wallboard for all walls excluding code requirement for fire walls.** • **Installation of one dedicated 3/4inch electrical raceway for a future circuit to accommodate two 220 Volt electric car charging stations inside the garage.** • **Installation of 90% high efficiency fan forced heating.** • **Zoned heating and air condition for all one and two-story homes.** • **Listed sound attenuated materials in wall that adjoin a bathroom and or bedroom walls.** • **Installation of high efficiency energy star water heater with energy factor of 0.70.** • **Install rain sensor monitor in irrigation system.**		

18.78.290	**Lot Layout and Orientation**		
a. Avoids deep or narrow lots and provides side yard setbacks that exceed city requirements by 20%.	Side yard setbacks (majority) shall exceed city requirements by 20%.		
c. Avoids sharp angled lots	No sharp angled lots or poor building sites proposed.		
d. Driveways < 150 ft. long	No driveways of 150 feet in length are proposed.		
e. Transition of lot sizes	A sufficient transition in lot sizes shall be proposed in the site plan design to allow compatibility between existing and proposed neighborhoods.		
g. Exterior design	Each floor plan/elevation repeats less than 3.5 times.		
2. Street design			
a. Location to parks and open space	Park/open space area shall be aggregated into a large meaningful area.		
b. Visibility of entrances	Over 75% of the units entrances are visible from the public right of way.		
3. Variety of setbacks			
a. Between units - front	A minimum five foot front setback variation is provided between adjoining units.		
b. Between units - rear	A minimum five-foot rear setback variation is provided between single-family dwellings.		
c. Variation of lot widths	A four foot variation in standard lot widths (excluding cul-de-sac lots) and each lot width represents at least 10 percent of the total lots.		
d. Garage placement	At least 50% percent of units have side-loading, detached, rear garages, or two car garages with tandem parking space to accommodate a third vehicle inside the garage.		
4. Measures to reduce noise	Project commits to: • Greater setbacks at project boundaries. • Sound insulation in units exposed to higher noise		

	levels than average or on specific units as required by the Director of Planning. • Minimizing windows on the side of the units. • Locating AC units away from property lines.		
18.78.300	**Circulation Efficiency**		
1.a Discourage fast traffic	Project will have gated private streets.		
1.b Future street extensions	The project will provide the Peet Road/Hill Road realignment per the City's General Plan • Project will provide the following internal improvements: Privately maintained private streets. • Storm water bio-swales. • Project specific street sections will be utilized. • Roadway system that meets City Standard R-Values and allow for a looping pattern of circulation.		
1.d Looping pattern of circulation	Interior streets and/or drive aisles are designed to meet all city safety and parking standards and allow for a looping pattern of circulation.		
1.e Eliminate existing stubs	Full street improvements will be constructed as part of the Peet/Hill Road realignment work. The internal roadway system will meet City Standard R-Values and allow for a looping pattern of circulation	.	
1.g Minimum 20 ft. clear view backout distance	The project will provide for a minimum 20 foot clear view back outdistance between enclosed garage space and roadway and/or drive aisle.		
1.h Multiple access streets	All phases will have access from two separate streets.		
1.i Landscaped islands and entry monument	Islands and entry statements will be provided at all project entries.		
1.j Facilitates emergency response	The proposed access points to the project will provide adequate circulation for emergency response and police patrol.		

2.a Internal circulation for local residents	Internal project circulation is designed for use primarily by local residents.		
2.b Avoids undesirable future traffic situations	No double frontage lots. No utility easements in rear or side yards of private property. No landlocked property.		
2.c Detached sidewalks	**MC 14-12: Project shall include detached sidewalks with a minimum five foot street landscape strip**	FY 16-17 allocations	
Minimize damage to surrounding streets.	The project shall document the condition of the existing surrounding right-of-ways prior to any on-site grading. Any damage caused to the adjacent or surrounding right of ways as a result of the project's construction activity shall be the responsibility of the project to repair and restore to the satisfaction of the City Engineer.		
3a. Convert existing lights to LED	**Converts existing city lighting to energy efficient LED lights at a ratio of one street light conversion per dwelling unit. The cost of the light conversion shall be at least equal to or greater than $ 750.00 per unit.**	FY 16-17 allocations	

4. Dedication or improvement to existing streets and parking lots outside of project	**MC 11-03 & MC 14-12:** The project will install full street improvements on the realignment of Peet Road at a cost of $2200/unit. Should the cost exceed $2200/unit for said Peet Road realignment, applicant will install offsite improvements from the City approved list. The project has committed to install full street improvements along the full length realigned section of Peet Road between Half Road and the northwesterly boundary of the project. **MC 13-21:** The project will install street improvements along the length of the re- aligned section of Peet Road between Half Road and the northwesterly boundary of the project. The applicant has obtained letters from the affected property owners agreeing to the required dedication at a cost of $1,100 dollars per unit or pay an in- lieu-fee equal to $1,100 dollars per unit. Said fee shall not exceed $1,100 dollars per unit.	FY 13-14 & 16-17 allocations FY 15-16 allocations	$2200/unit $1,100/unit
18.78.310	**Safety and Security**		
1.a Provide fire escape ladder, fire extinguishers and fire proof safe.	**MC 11-03/ MC 13-21 & MC 14-12:** Units shall have a fireproof safe installed; the safe shall be bolted to the floor or other suitable location	FY 13-14 FY 15-16 & 16-17 allocations	
1.b Provide first aid kit	Applicant agrees to provide a first aid kit with a poison control document installed in the kitchen area of each D.U.		
1.d Provide outdoor lighting	Project will provide: • Outdoor lighting to meet all police department specifications. • Lockable hardware on all side yard gates. • On-site lighting (or modified electrolier) to a		

	minimum of 1.5 foot candles in all park and common areas		
1.e Illuminated address numbers and curb numbers	Developer will install illuminated address numbers for each unit and painted reflective curb numbers to be maintained by the homeowners association.		
2. Non-combustible siding materials	Noncombustible siding will be used on 50% of units comprising of at least 75% of the siding on each unit.		
2a. Natural Surveillance **2b. Territorial Reinforcement** **2c. Natural Access Control**	**Project will include features that maximize the visibility of people, parking and entrances** **Features that include landscape plantings, paving designs, and gateway treatments that define property lines and distinguish private space from public space** **Project shall include features that promotes natural access control by designing streets, walkways and entrances to clearly indicate public routes and discourage access to private areas**		
3. Monitored alarm system	**MC 11-03/MC 13-21 and MC 14-12:** Each unit shall have installed an intrusion alarm, fire alarm and heat detector system monitored by a central station and meets City ordinance. A one-yr monitoring contract shall be provided with home purchase and commits to deliver to the homeowner a City specific responsible listing card that the MH Police Dept. can keep on file.		
5. Neighborhood emergency preparedness program through HOA	Project commits to neighborhood Emergency Preparedness Program administered through a homeowners association or central property management.		
6. Carbon monoxide detection device	Each unit shall be provided a hardwired carbon monoxide detection device or devices with battery backup. The installations of the devices are to be located per manufacturer's requirement with at least one detector per floor of the residence.		

7. Neighborhood "Watch Program" in CC&R's	The developer shall include provisions in the Covenants, Conditions and Restrictions (CC&R's) of the homeowners association which directs a Board representative to the City of Morgan Hill Police Department's Community Service Officer to enact a neighborhood watch program to be established as part of the first phase of the development.		
18.78.320	**Landscaping, Screening and Color**		
1.a 24" box-size trees within project	Agrees to provide twenty-four inch box-size trees at a ratio of one box-size tree per ten trees.		
1.b Shading and screening of group parking areas	Sufficient planting will be provided around the necessary and appropriate group parking to achieve shading and visual screening as viewed from the public street.		
1.c Varied front yard landscaping	Varied front yard landscaping plans will be installed by the developer.		
1.d Energy saving trees on south walls	Deciduous trees will be planted along the south facing side of homes		
1.e Adheres to Street Tree Master Plan	Project will conforms to a Street Tree Master Plan		
2.a Drought tolerant grasses	Drought tolerant grasses are used for lawn areas and no more than twenty-five percent of the landscape area is covered with lawn.		
2.b Automatic irrigation systems	Automatic irrigation systems utilize separate valve and circuits for trees.		
2.d Use of water conserving plants	The landscape to be installed by the developer will include pervious hardscape coverage on at least fifteen percent of the landscape area.		
2.e Separate water source for irrigation of common area	A separate water source (e.g., well, import or recycled water) to irrigate common area landscape areas that are maintained by a homeowners association.		
3. Visible landscaping to public	Landscaping shall be installed on all areas visible from public and private rights-of-way.		

4. Minimize drainage runoff	Project will install pervious pavement in all open parking lots, driveways and sidewalk areas to minimize drainage runoff.		
18.78.330	**Natural and Environmental**		
1.a Minimize grading	Foundation types will be designed to minimize grading of the site and road alignment follows and maintains existing ground elevation to the greatest extent possible. Minimal grading is considered a fill or excavation of less than two feet in depth (four feet is acceptable for detention ponds or required fill for flood protection), and restricts the amount of runoff caused by impervious surfaces and the covering of land area suitable for percolation or bio-swales where applicable.		
1.c Preserves trees	Each building site and project circulation plan shall preserves significant trees as defined in Section 12.32.020G of the Morgan Hill Municipal Code.		
2.a Over and above commitments made in Quality of Construction, the proposed development will install the following: 2.a Over and above commitments made in Quality of Construction, the proposed development will install the following:	**MC 11-03:** The project will add 50 BIG points beyond the commitments in the Quality of Construction category **MC 13-21 & MC 14-12:: The project will add 40 BIG points beyond the 70 point commitment in the Quality of Construction category**		
2.b Minimizes use of sound walls	Landscape buffer areas shall be provided at Cochrane Road, Peet /Hill Road.		
3. Pre-wired for alt. energy	A 2.4 KwH solar system shall be installed on all homes. **MC 14-12:** Install solar photovoltaic panels to offset 60% of anticipated electrical energy demand of residential unit.		

4.b All homes use alternative power for home electricity	A 2.4 KwH solar system shall be installed on all homes. Install solar photovoltaic panels to offset 60% of anticipated electrical energy demand of residential unit.		
5. Exceed Title 24 by 30% for low VOC			
18.78.335	**Livable Communities**		
a. Porches and balconies	Uses porches, balconies, for any area viewed from the public right-of-way or multi-unit courtyards interior to the project on at least 25% of units to promote a neighborhood feel		
b. Roof lines	Home plans plans retain two different roof lines and two different pitches throughout.		
c. Profiles and massing	The proposed project conforms to the existing development that adjoins to the north.		
d. Relief and details	All materials and window detailing wrap all four sides of each home. Rear and side elevation offsets between first and second floors provide architectural interest. The color schemes are plotted to provide the additional variety and each scheme is utilized on less than 15% of the homes.		
2b In residential areas by constructing school bus bench and shelter within common area maintained by an HOA or at a location approved by the MHUSD.	Project commits to install a bus pullout area across the street from Live Oak High School.		
7. Provides privacy for residents	Uses design and layout techniques that give individuals maximum privacy within and outside the homes. Such techniques include the off set of windows between units, alternating outdoor patio areas and entrance and consideration of fence height in relation to grade changes.		

EXHIBIT D

DEVELOPMENT SCHEDULE /MC 11-03/ MC 13-21: Cochrane-Borello
Fiscal Year 2013-14 (15 allotments)
Fiscal Year 2015-16 (25 allotments) Fiscal Year 2016-17 (15 allotments)

I.	**SUBDIVISION AND ZONING APPLICATIONS**	
	Applications Filed:	September 1, 2009
II.	**SITE REVIEW APPLICATION**	
	Application Filed:	April 8, 2013
III.	**FINAL MAP SUBMITTAL**	
	Map, Improvements Agreement and Bonds:	
	FY 2013-14 – (15 units)	August 1, 2015
	FY 2015-16 – (25 units)	August 1, 2015
	FY 2016-17 – (15 units)	August 1, 2016
IV.	**BUILDING PERMIT SUBMITTAL**	
	Submit plans to Building Division for plan check:	
	FY 2013-14 – (15 units)	March 1, 2016
	FY 2015-16 – (25 units)	March 1, 2016
	FY 2016-17 – (15 units)	March 1, 2017
V.	**BUILDING PERMITS**	
	Obtain Building Permits:	
	FY 2013-14 – (15 units)	May 30, 2016
	FY 2015-16 – (25 units)	May 30, 2016
	FY 2016-17 – (15 units)	May 30, 2017
VI.	**COMMENCE CONSTRUCTION**	
	FY 2013-14 – (15 units)	June 30, 2016
	FY 2015-16 – (25 units)	June 30, 2016
	FY 2016-17 – (15 units)	June 30, 2017

Failure to commence construction by the dates listed above, shall result in the loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 72 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.