



## COMMUNITY DEVELOPMENT DEPARTMENT

Council Meeting Date: March 4, 2008  
Staff Report #: 08-029

Agenda Item #: H2

**INFORMATION: Update on the Development Agreement Process for the Revised Derry Mixed-Use Project Located at 550-580 Oak Grove Avenue and 540-570 Derry Lane.**

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This is an information report. Council action is not required at this time unless the Council determines that further review of the Development Agreement is needed prior to the required public hearings.

### BACKGROUND

On November 27, 2007, the Council considered an information item on the revised Derry project, including aspects such as changes to the project, the Settlement Agreement, the Development Agreement, and the project review process. During this meeting, a few Council members commented on a potential desire to see the Development Agreement prior to consideration of approval of the project, and mentioned forming a subcommittee to participate in the drafting of the Development Agreement. The Council did not provide formal direction to staff at this meeting regarding next steps.

The focus of this report is on the Development Agreement component of this project. All of the previous reports and minutes related to this project, including Planning Commission meetings, are available on the City maintained project page at the following website address:

[http://www.menlopark.org/projects/comdev\\_dmu.htm](http://www.menlopark.org/projects/comdev_dmu.htm)

A separate staff report related to the Derry project is also on the March 4, 2008 Council agenda. The other staff report is an information item describing a potential grant that staff intends to submit to the State Department of Housing and Community Development on behalf of the Derry project. Since the status of the grant funding is unknown at this time, the remainder of this staff report is written with the assumption that the revised Derry project would not receive the grant. Staff has yet to determine the full implications of the Derry project receiving the grant. Staff expects to learn about the outcome of the State's decision on the grant after May 6, 2008.

## ANALYSIS

A Development Agreement is a contract between the City of Menlo Park and a project sponsor that delineates the terms and conditions of a proposed development project. A Development Agreement allows a project sponsor to secure vested rights and it allows the City to secure certain benefits. Development Agreements are enabled by California Government Code Sections 6584-65869.5. The City Council adopted Resolution No. 4159 in January 1990, establishing the procedures and requirements for the consideration of Development Agreements (available upon request at the Planning Division). The resolution contains specific provisions regarding the form of applications for development agreements, minimum requirements for public notification and review, standards for review, findings and decisions, amendments and cancellation of agreements by mutual consent, recordation of the agreements, periodic review, and modification or termination of an agreement. The City has previously entered into only one Development Agreement, with Sun Microsystems for the development of its campus at 1601 Willow Road. This document is available for review upon request at City offices.

As a result of the Settlement Agreement entered into by O'Brien Homes, LLC and Menlo Park Tomorrow, the applicant is requesting a Development Agreement as part of the revised Derry project. The Development Agreement tool will allow the City to accept an offer by the applicant to pay two million dollars over time in exchange for securing vesting rights to develop the project under the development requirements in place at the time of approval.

Approval of the Development Agreement would be part of the final set of City Council actions on the Derry project. The other actions involve rescinding previous approvals and pursuing new approvals for a General Plan Amendment, Zoning Ordinance Amendment, Rezoning, Planned Development Permit, Major Subdivision and Heritage Tree Removal Permit. A draft Development Agreement has been included as Attachment A in order to provide the Council with a better understanding of the content of a Development Agreement. This draft Development Agreement is a work in progress and will be subject to further revision as it is reviewed in detail by the applicant, representatives of Menlo Park Tomorrow, staff and Planning Commission before the final draft is submitted to the Council for approval.

Staff believes that the draft Development Agreement provides an overall benefit to the City for the following reasons:

- The two million dollars can be used for any purpose as deemed appropriate by the City Council unlike impact fees which are meant to address a specific impact and are restricted in their use. (Staff would suggest that the Council begin discussions about potential uses of the two million dollars after a building permit is issued and construction commences).

- The Development Agreement is consistent with the terms of the Settlement Agreement, and as such provides a greater likelihood that the referendum issues can be resolved and a project can move forward to the construction stage.
- The Development Agreement provides for adequate controls on the development including such items as phasing, conditions, and fees.

The Development Agreement is one component of the project and will be reviewed concurrently with the other requirements and obligations that will be outlined in other documents such as the BMR Housing Agreement and Planned Development Permit, which includes the development regulations, conditions of approval and mitigation measures from the Environmental Impact Report (EIR). The revised Derry project still needs to be considered at a series of public meetings as follows:

- Housing Commission Meeting to make recommendations on the proposed BMR Agreement – *March 5, 2008*;
- Planning Commission Public Hearing to make recommendations on the Addendum to the Certified EIR and the requested development applications, including the Development Agreement – *March 31, 2008*;
- City Council Public Hearing on the EIR Addendum and the requested development applications, including introduction of the ordinances to amend the Zoning Ordinance, rezone the property, and codify the Development Agreement – *approximately five weeks after Planning Commission recommendation on the project; and*
- City Council Meeting to adopt the ordinances to amend the Zoning Ordinance, rezone the property, and codify the Development Agreement – *at the next available Council meeting following introduction of the ordinances.*

Staff will continue with the processing of the requested applications, including the Development Agreement, unless directed otherwise by the City Council. If the Council would like to pursue an alternative process, including the potential formation of a Council subcommittee to work on the Development Agreement, Council should direct staff to schedule this matter for the next available Council meeting. The formation of a subcommittee would affect the tentative date of the Planning Commission meeting because the Commission is required to review and comment on the Draft Development Agreement.

## **IMPACT ON CITY RESOURCES**

Staff time spent on the development review of this project, including the preparation of the Development Agreement, is fully recoverable through fees charged to the applicant.

## **POLICY ISSUES**

The proposed project will ultimately require the Council to consider a policy decision whether to amend the General Plan and Zoning Ordinance and rezone the property. The implications associated with this decision will be analyzed through the project review process.

## **ENVIRONMENTAL REVIEW**

An Addendum to the certified EIR will be prepared for the revised project. The City Council certified the Final EIR on August 29, 2006. The Addendum will describe changes to the project analyzed in the Final EIR, the likely environmental effects of these changes, and an explanation of the decision not to prepare a Subsequent EIR.

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Report Author

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## **PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting. In addition, the staff report was posted on the Derry Mixed-Use Project webpage on the City's website, and an email bulletin was sent to all subscribers to the page.

## **ATTACHMENTS**

- A. Draft Development Agreement (without Exhibits)

## **OTHER AVAILABLE DOCUMENTS**

Previously distributed documents for this project with all of the attachments are available for review during business hours at the Planning Division. Documents and information on the project are also available on the project webpage:  
[http://www.menlopark.org/projects/comdev\\_dmu.htm](http://www.menlopark.org/projects/comdev_dmu.htm)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between the City of Menlo Park, a municipal corporation of the State of California ("City") and O'Brien at Derry Lane, LLC, a \_\_\_\_\_ limited liability company, ("Developer"), pursuant to the authority of California Government Code sections 65864-65869.5 and City Resolution No. 4159.

RECITALS:

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

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 65864-65869.5 authorizing the City to enter into development agreements in connection with the development of real property within its jurisdiction by qualified applicants with a requisite legal or equitable interest in the real property which is the subject of such development agreements.

B. As authorized by Government Code section 65865(c), City has adopted Resolution No. 4159 establishing the procedures and requirements for the consideration of development agreements within the City.

C. Developer owns or has a contract to acquire those certain parcels of land (collectively referred to as the "Property") outlined in Exhibit A attached hereto and being more particularly described in Exhibit B attached hereto and has obtained approval of a Planned Development Permit (the "Planned Development Permit") and other necessary approvals for the development of the Property (collectively "Project Approvals") that, among other things, included development of the Property with a mixed use residential and commercial project consisting of 24,925 square feet of commercial space, of which no more than 12,275 shall be office space, 108 residential condominium units of which 16 shall be below market rate ("BMR") units, and 301 on-site parking spaces (the "Project").

D. The City examined the environmental effects of the earlier larger Derry Lane project in an Environmental Impact Report (the "Derry Lane EIR") prepared pursuant to the California Environmental Quality Act (CEQA). On August 29, 2006, the City Council reviewed and certified the Derry Lane EIR and approved an earlier larger version of the project that contained more units and consisted of more square footage than the Project.

E. Following approval of the earlier larger project some residents circulated and obtained signatures on a referendum petition and submitted such referendum petition challenging the earlier larger project in a timely manner. Since receipt of the referendum petition, the original project approvals have been suspended pending either setting an election on the referendum or repeal of the original project approvals. The City Council repealed the prior project approvals immediately prior to and contingent upon approval of the Project Approvals.

F. The City Council has reviewed and approved an Addendum to the Derry Lane EIR and has made findings that the Project has no greater impacts than the original project studied in the EIR.

G. The City has determined that the Project is a development for which a development agreement is appropriate. A development agreement will eliminate uncertainty in the City's land use planning for and secure orderly development of the Project and otherwise achieve the goals and purposes for which Resolution No. 4159 was enacted by City. The Project will generate \$2,000,000 in public benefit payments along with other fees for the City. Developer will incur substantial costs in order to comply with the conditions of approval and to assure development of the Property in accordance with this Agreement. In exchange for these benefits to the City and the public, Developer desires to receive assurance that City shall grant permits and approvals required for the development of the Project in accordance with the Existing City Laws, subject to the terms and conditions contained in this Agreement. In order to effectuate these purposes, the Parties desire to enter into this Agreement.

H. On \_\_\_\_\_, 2008, after conducting a duly noticed public hearing pursuant to Resolution No. 4159, the Planning Commission recommended that the City

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Council approve this Agreement, based on the following findings and determinations: That this Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan as amended by the Project Approvals; is compatible with the uses authorized in and the regulations prescribed for the land use district in which the Property is located, as amended by the Project Approvals; is in conformity with public convenience, general welfare and good land use practices; will not be detrimental to the health, safety and general welfare of the City or the region surrounding the City; will not adversely affect the orderly development of property or the preservation of property values within the City; and will promote and encourage the development of the Project by providing a greater degree of certainty with respect thereto.

I. Thereafter, on \_\_\_\_\_, 2008, the City Council held a duly noticed public hearing on this Agreement pursuant to Resolution No. 4159 and made the same findings and determinations as the Planning Commission. On that same date, the City Council made a decision to approve this Agreement by introducing Ordinance No. \_\_\_\_ (the "Enacting Ordinance"). On \_\_\_\_\_, 2008, the City Council adopted the Enacting Ordinance. The Enacting Ordinance became effective on \_\_\_\_\_, 2008.

NOW, THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5, and in consideration of the mutual covenants and promises of the Parties herein contained, the Parties agree as follows:

1. Definitions. Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

1.1 Approvals. Any and all permits or approvals of any kind or character required under the City Laws in order to develop the Project including, but not limited to, building permits, site clearance, grading plans and permits, encroachment permits, final subdivision map, and certificates of occupancy/final inspections.

1.2 City Laws. The ordinances, resolutions, codes, rules, regulations and official policies of City, governing the permitted uses of land, density, design, improvements and construction standards and specifications applicable to the development of the Property. Specifically, but without limiting the generality of the

foregoing, City Laws shall include the City's General Plan, the City's Zoning Ordinance and the City's Subdivision Ordinance.

1.3 Conditions. All conditions, exactions, fees or payments, dedication or reservation requirements, obligations for on- or off-site improvements, services or other conditions of approval called for in connection with the development of or construction on property under the Existing City Laws, whether such conditions constitute public improvements, mitigation measures in connection with environmental review of any project, or impositions.

1.4 Derry Lane EIR. The Environmental Impact Report for the Project Approvals approved by the City Council on \_\_\_\_\_, 2008, as described in Recital D above.

1.5 Director. The Director shall mean the Director of Community Development for the City of Menlo Park.

1.6 Enacting Ordinance. Zoning Ordinance No. \_\_\_\_, introduced by the City Council on \_\_\_\_\_, 2008, and adopted by the City Council on \_\_\_\_\_, 2008, approving this Agreement, as described in Recital I above.

1.7 Existing City Laws. The City Laws in effect as of the Effective Date (as defined in Section 2.1 below).

1.8 Laws. The laws and Constitution of the State of California, the laws and Constitution of the United States and any codes, statutes or executive mandates in any court decision, state or federal, thereunder.

1.9 Party. A signatory to this Agreement, or a successor or assign of a signatory to this Agreement.

1.10 Project. The uses, Vested Elements, and site plan approved by or embodied within the Revised Planned Development Permit, as it may hereafter be further modified pursuant to this Agreement.

1.11 Project Approvals. The Planned Development Permit for the Property, the BMR Agreement, and other necessary approvals of the City Council and the Planning Commission necessary to develop and construct the Project approved by the City Council on \_\_\_\_\_, 2008, as described in Recitals D and E above.

1.12 Property. The real property outlined in Exhibit A and described in Exhibit B hereto on which Developer intends to develop the Project.

1.13 Resolution No. 4159. Resolution No. 4159 entitled "Resolution of the City Council of the City of Menlo Park Adopting Regulations Establishing Procedures and Requirements for Development Agreements" adopted by the City Council of the City of Menlo Park on January 9, 1990.

2. Effective Date; Condition Subsequent; Term.

2.1 Effective Date. This Agreement shall be dated and the obligations of the Parties hereunder shall be effective as of the effective date of the Enacting Ordinance, pursuant to Government Code Section 36937, as specified in Recital I above (the "Effective Date"). Not later than ten (10) days after the Effective Date, the City and Developer (and if the Developer is not the owner of the Property, the owner of the Property) shall execute and acknowledge this Agreement, and the City shall cause this Agreement to be recorded in the Official Records of the County of San Mateo, State of California as provided for in Government Code Section 65868.5. However, failure to record this Agreement within the time period provided for in section 65868.5 shall not affect its validity or enforceability among the Parties.

2.2 Term. The Term of this Agreement shall commence on the Effective Date and shall terminate on the tenth (10<sup>th</sup>) anniversary of the Effective Date, unless sooner terminated or extended as hereinafter provided. If Developer fails to develop the Project during the Term of this Agreement, all of the Project Approvals, including but not limited to the Planned Development Permit shall expire and terminate as of the date of termination of this Agreement.

3. General Development of the Project.

3.1 Project. Developer shall have the vested right to develop the Project on the Property in accordance with the terms and conditions of this Agreement, the Project Approvals, including the Planned Development Permit, a copy of which is attached hereto as Exhibit C, and such amendments thereto as shall from time to time be approved, pursuant to this Agreement; and City shall have the right to control development of the Property in accordance with the provisions of this Agreement and the Project Approvals. Except as otherwise specified herein, this Agreement, the

Planned Development Permit, the Project Approvals and the Existing City Laws shall control the overall design, development and construction of the Project, and all improvements and appurtenances in connection therewith, including, without limitation, the permitted uses on the Property, the density and intensity of uses, the maximum height, the allowable floor area ratios, the number of allowable parking spaces, the amount of required landscaping, the maximum number of units, all reservations and dedications of land for public purposes (the "Vested Elements"), and all mitigation measures and conditions required or imposed in connection with the Project Approvals in order to minimize or eliminate environmental impacts or any impacts of the Project.

3.2 Conditions. In addition to all City mandated fees and other conditions of approval as set forth in the Project Approvals, as consideration for the City's entering into this Agreement, Developer shall make a Two Million Dollar (\$2,000,000.00) public benefit contribution to the City ("Public Benefit Contribution"). The Public Benefit Contribution shall be made on a pro rata basis on the sale of the market rate residential units with \$100,000 due after the close of escrow of the sale of the first residential unit, a pro-rated portion of the balance due upon the close of escrow of the sale of each remaining market rate residential unit, with the balance due no later than two (2) years from the close of escrow of the sale of the first residential unit in the Project. The denominator of such pro-rata calculation shall be all market rate residential units included in the Project.

3.3 Project Phasing. To the extent that the Project is developed in phases, the Parties acknowledge that presently Developer cannot predict the timing or sequence of any such Project phasing. Such decisions depend upon numerous factors which are not within the control of Developer, such as market orientation and demand, interest rates, competition and other similar factors. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, that failure of the Parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the Parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right to develop the Project in phases in such

order and at such times as Developer deems appropriate within the exercise of its subjective business judgment and the provisions of this Agreement; provided that:

3.3.1 City shall have the option to terminate this Agreement if Developer has not received a building permit for the final phase of the Project (thus receiving building permits for all square footage allowed by this Agreement) and commenced construction in good faith reliance upon the building permits by the ninth anniversary of the Effective Date; and

3.3.2 As long as this Agreement is in effect, Developer shall have the obligation to comply with all of the conditions of approval as set forth herein and all Project Approvals, including compliance with the BMR Agreement for the Project. By entering into this Agreement, Developer shall not be obligated to develop the Property.

3.4 Other Governmental Permits. Developer or City (whichever is appropriate) shall apply for such other permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project (such as public utility districts or CalTrans) as may be required for the development of, or provision of services to, the Project. City shall promptly and diligently cooperate, at no cost to the City, with Developer in its endeavors to obtain such permits and approvals and, from time to time at the request of Developer, shall attempt with due diligence and in good faith to enter into binding agreements with any such entity in order to assure the availability of such permits and approvals or services. To the extent allowed by law, Developer shall be a party or third party beneficiary to any such agreement and shall be entitled to enforce the rights of Developer or City thereunder or the duties and obligations of the parties thereto. Developer shall reimburse City for all its expenses including, but not limited to, legal fees and staff time (as such costs are normally charged applicants at the time of imposition) incurred in entering into such agreements and shall indemnify and hold the City harmless from any and all liabilities under any such agreements.

3.5 Additional Fees. Except as set forth in this Agreement and the Project Approvals, the City shall not impose any further or additional fees, taxes or assessments, whether through the exercise of the police power, the taxing power, or

any other means, other than those prescribed in the Project Approvals, including the Planned Development Permit, the Existing City Laws and this Agreement, provided that:

3.5.1 If City forms an assessment district including the Property, and the assessment district is City-wide or area-wide, as defined below, the Property may be legally assessed through such district based on the benefit to the Property, which assessment shall be consistent with the assessment of other property in the district similarly situated. In no event, however, shall Developer's obligation to pay such assessment result in a cessation or postponement of construction of the Project or affect in any way the development rights for the Project.

3.5.2 City may charge Developer processing fees for land use approvals, building permits, encroachment permits, and other similar permits which are in force and effect on a City-wide basis at the time application is submitted for those permits.

3.5.3 If City exercises its taxing power in a manner which will not change any of the Conditions applicable to the Project and so long as any taxes are uniformly applied on a City-wide or area-wide basis, as defined below, the Property may be so taxed, which tax shall be consistent with the taxation of other properties in the City or area similarly situated.

3.5.4 If state or federal laws are adopted which enable cities to impose fees on existing projects and if, consequently, the City adopts enabling legislation and imposes fees on existing projects on a City-wide or area-wide basis, as defined below, these fees may be imposed on the Project, which fees shall be consistent with the fees imposed on other properties in the City or area similarly situated.

For purposes of this Agreement, "area-wide" shall cover not only the Property, but also at least all parcels zoned and/or developed in a manner similar to the Property and located along the El Camino Real corridor, defined as the area bounded by the railroad tracks to the northeast, the City limits to the southeast, the rear of the properties along the southwest frontage of El Camino Real and the City limits to the northwest. The Parties acknowledge that the provisions contained in this Section 3.5

are intended to implement the intent of the Parties that Developer has the right to develop the Project pursuant to specified and known criteria and rules, and that City receive the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations.

3.6 Effect of Agreement. This Agreement, the Project Approvals, including the Planned Development Permit, and all plans, specifications, schematic drawings and models, if any, upon which such Project Approvals are based, shall constitute a part of the Enacting Ordinance, as if incorporated by reference therein in full.

4. Specific Criteria Applicable to Development of the Project.

4.1 Applicable Laws and Standards. Notwithstanding any change in any Existing City Law including, but not limited to any change by means of ordinance, resolution, initiative, referendum, policy or moratorium, and except as otherwise provided in this Agreement, the laws and policies applicable to the Property are set forth in Existing City Laws (regardless of future changes in these by City), this Agreement and the Project Approvals, including the Planned Development Permit. The Project has vested rights to be built and occupied on the Property in accordance with the Vested Elements, provided that City may apply and enforce the California Building Code (including the California Mechanical Code, California Electrical Code and California Plumbing Code) and California Fire Code in effect at the time Developer applies for building permits for any aspect of the Project, and provided that Developer is in compliance with all conditions of the Project Approvals and this Agreement.

4.2 Application of New City Laws. Nothing herein shall prevent City from applying to the Property new City Laws that are not inconsistent or in conflict with the Existing City Laws or the intent, purposes or any of the terms, standards or conditions of this Agreement, and which do not affect the Vested Elements, impose any further or additional fees or impose any other conditions requiring additional traffic improvements/requirements or additional off-site improvements that are inconsistent with this Agreement or the intent of this Agreement. Any action or proceeding of the City

that has any of the following effects on the Project shall be considered in conflict with this Agreement and the Existing City Laws:

4.2.1 limiting the uses permitted on the Property;

4.2.2 limiting or reducing the density or intensity of uses, the maximum height, the allowable floor area ratios, the allowable number of units, increasing the amount of required landscaping or reservations and dedications of land for public purposes, or increasing the number of required parking spaces on site;

4.2.3 limiting the timing or phasing of the Project in any manner;

4.2.4 limiting the grading or other improvements on the Property in a manner that is inconsistent with or more restrictive than the limitations included in this Agreement; or

4.2.5 applying to the Project or the Property any law, regulation, or rule restricting or affecting a use or activity otherwise allowed by this Agreement.

The above list of actions is not intended to be comprehensive, but is illustrative of the types of actions that would conflict with this Agreement and the Existing City Laws.

4.3 Timing. Without limiting the foregoing, no moratorium or other limitation affecting building permits or other land use entitlements, or the rate, timing or sequencing thereof shall apply to the Project; provided, that if the City and County of San Francisco imposes a moratorium on additional water allocations on its suburban water purchasers and no allocation has been made to this Project, the City shall have no obligation to process approvals for the Project, until such moratorium is lifted. When San Francisco allocates water to the Project, or a portion of the Project, the City shall process approvals for such portion of the Project for which an allocation was received.

4.4 Easements; Improvements. The City shall cooperate with Developer in connection with any arrangements for abandoning existing utility or other easements and facilities and the relocation thereof or creation of any new easements within the Property necessary or appropriate in connection with the development of the Project. All improvements required to be constructed by Developer as Conditions of

approval shall be constructed by Developer congruent with each phase of the Project, as may be reasonably determined by the Director of Public Works.

5. Indemnity. Developer shall indemnify, defend and hold harmless City, and its elective and appointive boards, commissions, officers, agents, and employees, from any and all claims, causes of action, damages, costs or expenses (including reasonable attorneys' fees) arising out of or in connection with, or caused on account of, the development of the project, any Approval with respect thereto, or claims for injury or death to persons, or damage to property, as a result of the operations of Developer or its employees, agents, contractors or representatives with respect to the Project.

6. Periodic Review for Compliance.

6.1 Annual Review. City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance with the terms of this Agreement pursuant to Government Code § 65865.1 and Resolution No. 4159. Notice of such annual review shall include the statement that any review may result in amendment or termination of this Agreement. All costs incurred by City for the annual review by City shall be borne by Developer. A finding by City of good faith compliance by Developer with the terms of Agreement shall conclusively determine said issue up to and including the date of said review.

6.2 Non-Compliance. If the City Council makes a finding that Developer has not complied in good faith with the terms and conditions of this Agreement, the City shall provide written notice to Developer describing (a) such failure to comply with the terms and conditions of this Agreement (referred to herein as a "Default"), (b) whether the Default can be cured, (c) the actions, if any, required by Developer to cure such Default, and (d) the time period within which such Default must be cured. If the Default can be cured, Developer shall have at a minimum thirty (30) days after the date of such notice to cure such Default, or in the event that such Default cannot be cured within such thirty (30) day period but can be cured within one (1) year, Developer shall have commenced the actions necessary to cure such Default and shall be diligently proceeding to complete such actions necessary to cure such Default within thirty (30) days from the date of notice. If the default cannot be cured or cannot be cured within

one (1) year, as determined by City during periodic or special review, the City Council may modify or terminate this Agreement as provided in Section 6.4 and Section 6.5.

6.3 Failure to Cure Default. If the Developer fails to cure a Default within the time periods set forth above, the City Council may modify or terminate this Agreement as provided below.

6.4 Proceeding Upon Modification or Termination. If, upon a finding under Section 6.2 and the expiration of the cure period specified in Section 6.3 above, City determines to proceed with modification or termination of this Agreement, City shall give written notice to Developer of its intention so to do. The notice shall be given at least ten (10) calendar days before the scheduled hearing and shall contain:

6.4.1 The time and place of the hearing;

6.4.2 A statement as to whether or not City proposes to terminate or to modify the Agreement; and

6.4.3 Such other information as is reasonably necessary to inform Developer of the nature of the proceeding.

6.5 Hearings on Modification or Termination. At the time and place set for the hearing on modification or termination, Developer shall be given an opportunity to be heard, and Developer shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on the issue shall be on Developer. If the City Council finds, based upon substantial evidence, that Developer has not complied in good faith with the terms or conditions of the Agreement, the City Council may terminate this Agreement or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the City. The decision of the City Council shall be final.

7. Permitted Delays.

7.1 Extension of Times of Performance. Performance by either Party under this Agreement shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fire, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, restrictions imposed by governmental or quasi-governmental entities other

than City, unusually severe weather, acts of the other Party, acts or the failure to act of any public or governmental agency or entity, or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of cause. If, however, notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the joint agreement of the City and Developer. Litigation attacking the validity of this Agreement, or any permit, ordinance, or entitlement or other action of a governmental agency necessary for the development of the Property pursuant to this Agreement shall also be deemed to create an excusable delay under this Section. In no event, shall the Term of this Agreement be extended beyond the original term, without the joint agreement of the City and Developer.

7.2 Supersedure by Subsequent Laws. If any Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the Parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in Developer's reasonable business judgment, then Developer shall have the right to terminate this Agreement by written notice to City. Developer shall also have the right to challenge the new Law preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

8. Termination.

8.1 City's Right to Terminate. City shall have the right to terminate this Agreement only under the following circumstances:

8.1.1 Developer has not received building permits for all square footage allowed by this Agreement and commenced construction in good faith reliance upon the building permits by the ninth (9<sup>th</sup>) anniversary of the Effective Date.

8.1.2 The City Council has determined that Developer is not in substantial compliance with the terms of this Agreement and this Default remains uncured, all as set forth in Section 6.

8.2 Developer's Right to Terminate. Developer shall have the right to terminate this Agreement only under the following circumstances:

8.2.1 Developer has found City in breach of this Agreement, has given City notice of such breach and City has not cured such breach within thirty (30) days of receipt of such notice or, if the breach cannot reasonably be cured within such thirty (30) day period, if the City has not commenced to cure such breach within thirty (30) days of receipt of such notice and is not diligently proceeding to cure such breach.

8.2.2 Developer is unable to complete the Project because of supersedure by a subsequent Law or court action, as set forth in Sections 7.2 and 13.

8.2.3 Developer determines, in its business judgment, that it is not practical or reasonable to pursue development of the Property.

8.3 Mutual Agreement. This Agreement may be terminated upon the mutual agreement of the Parties.

8.4 Effect of Termination.

8.4.1 General Effect. If this Agreement is terminated for any reason other than due to a default on the part of the City that is not cured, such termination shall not affect any Condition or obligation due to City from Developer arising prior to the date of termination and such termination shall result in the expiration or termination of all Project Approvals, including the Planned Development Permit, unless the Project has been substantially completed and Developer has paid the Public Benefit Contribution in full, in which case any City entitlement or approval with respect to the Property that has been granted prior to the date of termination shall remain in effect.

8.4.2 Future Obligations.

(a) If the Agreement is terminated for any of the following reasons, Developer shall have no future obligations to city from the date of termination:

(1) City's failure to cure any breach of this Agreement, as set forth in section 8.2.2.

(2) Developer's termination because of supersedure by a subsequent Law, as set forth in Section 8.2.3.

(b) If the Agreement is terminated for any of the following reasons, Developer shall have no future obligations to City from the date of termination, except that Developer shall continue to guarantee payment of the Public Benefit Contribution as set forth in Section 3.2 to the extent the Project has been developed:

(1) Developer's failure to cure a Default, as set forth in Section 8.1.5.

(2) Developer's decision not to pursue development of the Property, as set forth in Section 8.2.4.

8.5 Recordation of Termination. In the event of a termination, City and Developer agree to cooperate with one another in executing a Memorandum of Termination to record in the Official Records of San Mateo County within thirty (30) days of the date of termination.

9. Remedies. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the Parties hereto, provided that Developer's remedies shall be restricted to bringing an action or actions for writ of mandate, injunction, specific performance or refund for any fees, taxes or assessments imposed in violation of this Agreement.

10. Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No

waiver by a Party of an event of Default shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such event of Default. No express written waiver of any event of Default shall affect any other event of Default, or cover any other period of time, other than any event of Default and/or period of time specified in such express waiver. Except as provided in this Section, all of the remedies permitted or available to a Party under this Agreement, or at law or in equity, shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

11. Attorneys' Fees. If either Party brings an action or proceeding (including, without limitation, any cross-complaint, counterclaim, or third-party claim) against the other Party by reason of an event of Default, or otherwise arising out of this Agreement, the prevailing Party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees (including, without limitation, fees and expenses), which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Party" within the meaning of this section shall include, without limitation, a Party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

12. Limitations on Actions. City and Developer hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status. If any action or proceeding is instituted by any third party challenging the validity of any provisions of this Agreement, or any action or decision taken or made hereunder, the Parties shall cooperate in defending such action or proceeding.

13. Effect of Court Action. If any court action or proceeding is brought by any third party to challenge this Agreement, or any other permit or Approval required from City or any other governmental entity for development or construction of the Project, or any portion thereof, and without regard to whether or not Developer is a party to or real

party in interest in such action or proceeding, then (a) Developer shall have the right to terminate this Agreement upon thirty (30) days notice in writing to City, given at any time during the pendency of such action or proceeding, or within ninety (90) days after the final determination therein (including any appeals), irrespective of the nature of such final determination, and (b) any such action or proceeding shall constitute a permitted delay under Section 7. If such court action or proceeding names the City as a party, Developer shall indemnify and defend City or, at City's option, pay all costs incurred by City in defending itself; however, City agrees to cooperate with Developer in defending such an action.

14. Estoppel Certificate. Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (a) this Agreement is in full force and effect and a binding obligation of the Parties, (b) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, (c) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (d) the requesting, Party has been found to be in compliance with this Agreement, and the date of the last determination of such compliance. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. The Director shall have the right to execute any certificate requested by Developer hereunder.

15. Mortgagee Protection; Certain Rights of Cure.

15.1 Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person (including any Mortgagee) who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

15.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 15.1 above, no Mortgagee who comes into possession of the Property, or any

part thereof, pursuant to foreclosure, or deed in lieu of foreclosure, or transferee of such Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, to guarantee such construction or completion or to be liable for any defaults or monetary obligations arising prior to acquisition of title to the Property by the Mortgagee or transferee and provided further that in no event shall any Mortgagee or its successors or assigns be entitled to a building permit or occupancy permit until all fees due under this Agreement relating to the portion of the Property acquired by such Mortgagee have been paid to the City and until any other default has been cured.

15.3 Notice of Default to Mortgagee; Right to Mortgagee to Cure. If City receives notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Developer, any notice of an event of Default or determination of noncompliance given to Developer. Each Mortgagee shall have the right (but not the obligation) for a period of ninety (90) days after the receipt of such notice from City to cure or remedy, or to commence to cure or remedy, the event of Default claimed or the areas of noncompliance set forth in the City's notice. If the Event of Default or such noncompliance is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee may seek to obtain possession with diligence and continuity through a receiver or otherwise, and may thereafter remedy or cure the Event of Default or noncompliance within ninety (90) days after obtaining possession. If any such Event of Default or noncompliance cannot, with diligence, be remedied or cured within such ninety (90) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such Event of Default or noncompliance if such Mortgagee commences a cure during such ninety (90) day periods, and thereafter diligently pursues completion of such cure to the extent possible.

15.4 Right of City to Cure. If Developer defaults under any Mortgage, then City shall have the right, but not the obligation, to cure such default prior to completion of any foreclosure or any proceeding to terminate the interest of Developer

in the Property. Each Mortgagee shall provide to City any notice of default given Developer under its Mortgage concurrently with serving the same upon Developer. If City invokes its right to cure hereunder, City shall be entitled to reimbursement from Developer of all costs and expenses incurred by City in curing such default. City shall also be entitled to a lien upon any of the Property, or portion thereof, encumbered by the Mortgage with respect to which Developer has defaulted, to the extent of such costs and disbursements.

16. Right to Assign. Developer's rights hereunder may be sold or assigned in conjunction with the transfer, sale or assignment of all or any portion of the Property at any time during the term of this Agreement upon all of the following terms and conditions:

16.1 City Consent. No such assignment shall occur without the prior written consent of City, which consent shall not be unreasonably withheld. In determining whether or not to grant consent, City shall exercise its discretion based upon, but not limited to, the experience and financial capability of the assignee to develop the Project and to perform the conditions set forth in this Agreement. The assignee shall cooperate with the City and provide to the City all information required by the City in order to exercise its discretion under this section.

16.2 Financing. Notwithstanding Section 16.1, mortgages, deeds of trust, sales and lease-backs, or other forms of conveyance required for any reasonable method of financing requiring a security arrangement with respect to the development of the Property are permitted without the consent of the City, provided the Developer retains the legal or equitable interest in the Property and remains fully responsible hereunder.

16.3 Internal Transfers. Notwithstanding Section 16.1, nothing in this Agreement shall be construed as restricting or limiting any internal (a) financing arrangements including mortgages, deeds of trust, sales and lease-backs, and other security arrangements, or (b) property transfers with respect to the Property when the sole participants in such transactions consist of Developer, its subsidiaries, its parent corporation, and/or other subsidiaries of its parent corporation at any tier.

16.4 Procedure. The City shall administer the provisions of this section through its Director. Developer shall notify the Director in writing of its request for City consent to an assignment or transfer under this section, together with a statement that if the Director does not notify the Developer within thirty (30) days of receipt of request that the City desires to consider and act upon the request, the request will be deemed approved. If, within such thirty (30) day period, the Director does not so notify the Developer, the request shall be approved, and no further action of the City shall be necessary. If, within such thirty (30) day period, the Director notifies the Developer that the request will be considered and acted upon by the Director, the Developer shall furnish such additional information as the Director may reasonably request, and the Director shall proceed to consider and act upon the Developer's request for City consent to the proposed assignment or transfer within thirty (30) days of such notification or the receipt of such additional information, if additional information is requested. In the event the Director determines that the assignment or transfer should be acted upon by the City Council, the Director shall so notify the Developer within thirty (30) day of receipt of the Developer's notice, along with a request for such additional information as the Director may reasonably request, if any. The City Council shall proceed to consider and act upon the Developer's request for City consent to the proposed assignment or transfer within forty-five (45) days of the date of such notification or the receipt of such additional information, if additional information is requested. Failure to act within the forty-five (45) day period shall be deemed an approval of the request.

16.5 Release Upon Transfer of Property. Upon the sale, transfer or assignment of Developer's rights and interests under this section of this Agreement, Developer shall be released from its obligations pursuant to this Agreement with respect to the Property or portion thereof so transferred which arise subsequent to the effective date of the transfer, provided that the City has consented to this assignment, in writing, and provided that the City has executed a written agreement with the transferee and/or assignee which specifies the rights and obligations of the assignee and/or transferee to the City.

16.6 Release of Units. Upon the sale and transfer of individual residential units to third party purchasers and payment of the pro-rata portion of the Public Benefit Contribution required pursuant to the terms and provisions of Section 3.2, individual units shall be released from and sold free and clear of the terms and provisions of this Agreement. The Director or the City Manager shall have authority to execute any documents as may be required to effect the release of units from the provisions of this Agreement upon the close of escrow for the transfer of individual units.

17. Covenants Run With the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors, and assignees, devisees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of laws or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors and assignees. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable laws including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, (a) is for the benefit of such properties and is a burden upon such properties, (b) runs with such properties, and (c) is binding upon each Party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each Party and its property hereunder, and each other person succeeding to an interest in such properties; provided that no liability or obligation shall accrue to any person, if this Agreement terminates pursuant to Section 2.2.

18. Amendment.

18.1 Amendment or Cancellation. Except as otherwise provided in this Agreement, this Agreement may be cancelled, modified or amended only by mutual consent of the Parties in writing, and then only in the manner provided for in Government Code Section 65868 and Article 7 of Resolution No. 4159. Any amendment to this Agreement which does not relate to the Term, the Vested Elements or the

Conditions shall require the giving of notice pursuant to Government Code Section 65867, as specified by Section 65868 thereof, but shall not require a public hearing before the Parties may make such amendment.

18.2 Recordation. Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than ten (10) days after the effective date or the action effecting such amendment, termination or cancellation; however, a failure to record shall not affect the validity of the amendment, termination or cancellation.

18.3 Amendment Exemptions. The following actions shall not require an amendment to this Agreement:

18.3.1 Subdivision. The subdivision of the Property, or the filing of a parcel map or subdivision map that creates individual condominium units, both residential units and commercial units, shall not require an amendment to this Agreement. Developer may subdivide the Property in accordance with the laws regarding subdivision in effect in the City at the time the Developer applies for any subdivision, as long as applying these laws does not affect the Vested Elements, impose any conditions regarding traffic improvements or requirements or off-site improvements, or impose any fees, taxes, or assessments other than those set out in this Agreement and provided any subdivision is consistent with the Project Approvals.

18.3.2 Architectural Review. Further architectural review of specific aspects of the Project or an amendment to the Planned Development Permit that is substantially consistent with the Planned Development Permit, as set out in Exhibit C, shall not require an amendment to this Agreement, provided any such architectural modifications are substantially consistent with the Project Approvals. When architectural review of any aspect of the Project is approved by the City, Exhibit C shall be deemed amended by such approval without further action by City or Developer.

19. Notices.

19.1 Procedure. Any notice to either Party shall be in writing and given by delivering the notice in person or by sending the notice by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the Party's mailing

address. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

City: City of Menlo Park  
Attn: Director of Community Development  
701 Laurel Street  
Menlo Park, CA 94025

With a  
copy to: City Attorney  
City of Menlo Park  
1100 Alma Street, Suite 210  
Menlo Park, CA 94025

Developer: O'Brien at Derry Lane, LLC  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a  
copy to: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Either Party may change its mailing address at any time by giving ten (10) days notice of such change in the manner provided for in this section. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

20. Miscellaneous.

20.1 Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in the businesses of Developer, the affairs of city, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

20.2 Approvals. Unless otherwise provided herein, whenever approval, consent or satisfaction (herein collectively referred to as an "approval") is required of a Party pursuant to this Agreement, such approval shall not be unreasonably withheld or delayed. If a Party shall disapprove, the reasons therefor shall be stated in reasonable detail in writing. Approval by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

20.3 Project Approvals Independent. All Approvals which may be granted pursuant to this Agreement, and all Approvals or other land use approvals which have been or may be issued or granted by the City with respect to the Property, constitute independent actions and approvals by the City. If any provisions of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if the City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any Approvals or other land use approvals. In such cases, such Approvals will remain in effect pursuant to their own terms, provisions and conditions.

20.4 Not A Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of the Property, or of the Project, or portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever. Developer shall have the right to prevent or prohibit the use of the Property or the Project, or any portion thereof, including common areas and buildings and improvements located thereon, by any person for any purposes inimical to the operation of a private, integrated Project as contemplated by this Agreement, except as dedications may otherwise be specifically provided in the Project Approvals.

20.5 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly

inequitable under all the circumstances or would frustrate the purposes of this Agreement.

20.6 Exhibits. The Exhibits listed in the Table of Contents and referred to herein are deemed incorporated into this Agreement in their entirety.

20.7 Entire Agreement. This written Agreement, the Project Approvals, and the Exhibits contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits.

20.8 Construction of Agreement. The provisions of this Agreement and the Exhibits shall be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purpose of the Parties. The captions preceding the text of each Article, Section, Subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to "person" shall include, without limitation, any and all corporations, partnerships or other legal entities.

20.9 Further Assurances; Covenant to Sign Documents. Each Party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgement or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

20.10 Governing Law. This Agreement, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the laws of the State of California.

20.11 Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

20.12 Time. Time is of the essence of this Agreement and of each and every term and condition hereof. In particular, City agrees to act in a timely fashion in accepting, processing, checking and approving all maps, documents, plans, permit applications and any other matters requiring City's review or approval relating to the Project or Property.

20.13 Subsequent Projects. After the effective date of this Agreement, City may approve other projects that place a burden on City's infrastructure; however, it is the intent and agreement of the Parties that Developer's right to build and occupy the Project, as described in this Agreement, shall not be diminished despite the increased burden of future approved development on public facilities.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

“City”

CITY OF MENLO PARK, a municipal corporation of the State of California

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form:

By: \_\_\_\_\_  
City Attorney

“Developer”

O'Brien at Derry Lane, LLC, a  
\_\_\_\_\_ limited liability company

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title)

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF SAN MATEO )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument. I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF SAN MATEO )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument. I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**DRAFT**

This document is recorded for the benefit of the City of Menlo Park and is entitled to be recorded free of charge in accordance with Sections 6103 and 27383 of the Government Code. When recorded, mail to:

City of Menlo Park  
Attn: City Clerk  
701 Laurel Street  
Menlo Park, CA 94025

## DEVELOPMENT AGREEMENT

CITY: City of Menlo Park  
DEVELOPER: O'Brien at Derry Lane, LLC

TABLE OF CONTENTS

To Be Completed Later

EXHIBITS

To Be Inserted Later