

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

**City of San Bruno
City Attorney
567 El Camino Real
San Bruno, CA 94066**

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103 AND 27383

Assessor's Parcel No. 020-145-480

(Space above this line for Recorder's use)

DEVELOPMENT IMPACT FEE AGREEMENT

This DEVELOPMENT IMPACT FEE AGREEMENT (this "**Agreement**") is made and entered into as of _____, 2019 (the "**Effective Date**") by and between the CITY OF SAN BRUNO, a general law city and California municipal corporation ("**City**") and SAN BRUNO INN, LP, a California limited partnership ("**Developer**").

Recitals

A. Developer has proposed development of a residential project in the City of San Bruno, commonly referred to as 500 Sylvan Avenue (the "**Project**"), on that certain real property located at 500 Sylvan Avenue, identified as Assessor's Parcel No. 020-145-480, and described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**").

B. Developer submitted applications for the following City approvals for the Project on February 23, 2018 (together, the "**Applications**"): P-D Zoning; Planned Development Permit; Architectural Review Permit; and Conditional Use Permit (together, the "**Project Approvals**"). The Applications were determined or deemed complete pursuant to State law and the San Bruno Municipal Code as of August 30, 2018 (the "**Complete Application Date**"). City is in the process of considering approval of the Applications and the Project.

C. On February 26, 2019, the City Council of City adopted its Ordinance No. 2019-1869 (the "**New Fee Ordinance**"), which amended the Municipal Code by adding Chapter 12.260 (the "**Development Impact Fees Code**") to establish certain fees on new development (all such fees, the "**Development Impact Fees**"). Concurrently the City Council adopted its Resolution No. 2019-20 to set rates for each Development Impact Fee (the "**Fee Setting Resolution**").

D. As part of adopting the Fee Setting Resolution, the City Council recognized that City was in the process of considering applications for a number of proposed projects that had been submitted before adoption of the New Fee Ordinance. The City Council determined that if such projects are approved (in the City's sole discretion) they would not be subject to the

Development Impact Fees, subject to certain requirements (the “**Fee Exemption**”). Consequently, Section 4 of the Fee Setting Resolution provides that the Development Impact Fees shall not apply if: (1) the project’s application is deemed complete by May 1, 2019; (2) the applicant enters into a development agreement or other negotiated contract with the City by August 1, 2019; and (3) construction of the project commences in compliance with and prior to expiration or termination of the development agreement or other negotiated contract.

E. Developer wishes to satisfy the requirements of the Fee Setting Resolution and qualify for the Fee Exemption, and City is willing to enter into this negotiated contract that will satisfy the second requirement of the Fee Setting Resolution described in Recital D in return for Developer’s payment of a flat contribution to the City’s unrestricted capital reserve fund that would be equivalent to 50 percent of the otherwise applicable Development Impact Fees (an amount equal to \$98,271.00) and Developer’s commitment to begin construction of the Project by the date specified herein. City acknowledges that the Project qualifies for the Fee Exemption pursuant to the Fee Setting Resolution in that the Complete Application Date is on or before May 1, 2019, provided this negotiated Agreement is entered into on or before August 1, 2019 and subject to the terms and conditions in this Agreement.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and City agree as follows.

1. Alternative Payment In Lieu of Development Impact Fees. Subject to satisfaction of the terms and conditions herein, Developer shall pay a flat contribution to the City’s unrestricted capital reserve fund equivalent to 50 percent of the Development Impact Fees that otherwise would be due for the Project pursuant to the Development Impact Fees Code and the Fee Setting Resolution, which the parties agree would equal \$98,271.00 (the “**Alternative Payment**”). The Alternative Payment shall be made as a condition to issuance of the first building permit (as defined in Section 12.260.020 of the Development Impact Fees Code) for the Project (the “**First Building Permit**”).

2. Term and Termination. This Agreement shall terminate on December 31, 2020 (the “**Termination Date**”). The provisions of this Section 2 shall survive termination of this Agreement.

(a) If the First Building Permit has not been issued for the Project as of the Termination Date, then the full amount of Development Impact Fees required for the Project shall be paid pursuant to the Development Impact Fees Code at the time of such building permit issuance instead of the Alternative Payment.

(b) If prior to the Termination Date the First Building Permit for the Project has been issued and Developer has paid the Alternative Payment, but construction pursuant to the First Building Permit has not Commenced (as defined below) by the Termination Date, the full amount of Development Impact Fees that otherwise would have been due at the time of

issuance of the First Building Permit shall be paid as a condition to exercising such building permit and commencing construction, with credit given for the Alternative Payment previously paid. Unless and until such Development Impact Fees have been paid, no work may occur under the First Building Permit or any other permit for the Project.

(c) For purposes of this Agreement, construction shall be deemed to have “**Commenced**” if the Project has obtained and passed a footing and foundation building permit inspection pursuant to Chapter 1, Section 110.3.1 of the 2016 California Building Code.

3. No Other Effect on Approvals.

(a) Provided City in its sole discretion approves the Project Approvals, termination of this Agreement shall not affect said approvals or the expiration or termination date that City may specify for each Project Approval, except regarding the amount of Development Impact Fees to be paid for the Project.

(b) This Agreement shall have no effect on any fees, payments or other requirements the Project or Developer may be subject to that may be required by City or any other public entity, other than regarding the Development Impact Fees.

4. Miscellaneous Provisions.

(a) Notices. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows. Either party may change its address by sending notice pursuant to this section.

To City: City of San Bruno
567 El Camino Real
San Bruno, CA 94066
Attn: City Manager

with a copy to: City of San Bruno
567 El Camino Real
San Bruno, CA 94066
Attn: City Attorney

To Developer: _____

with a copy to: _____

(b) Attorneys' Fees. Should any legal action or arbitration be brought by either party because of a breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to all costs of suit, reasonable attorneys' fees, arbitration costs, costs for appeals or enforcement, and such other costs as may be determined by the court or arbitrator.

(c) Assignment by Developer. Developer may assign its rights under this Agreement only together with conveyance of all interest in the Property, and conditioned on giving City written notice within five (5) days of such assignment.

(d) Binding on Successors. The terms, covenants and conditions of this Agreement shall be binding on all heirs, successors and assigns of Developer.

(e) Interpretation. This Agreement shall be interpreted as though prepared jointly by both parties. Section headings are for convenience only and are not intended to be used in interpreting or construing the Agreement.

(f) Severability. If any provision of this Agreement is held, to any extent, invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provision, and shall remain in full force and effect.

(g) Entire Agreement; Amendment. The terms and conditions of this Agreement constitute the entire agreement between City and Developer with respect to the matters addressed in this Agreement. This Agreement may not be altered, amended or modified without the written consent of all parties hereto.

(h) Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of San Mateo, State of California.

(i) Authority. Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

(j) Time of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

(k) Recording. Developer acknowledges and agrees that City shall record this Agreement against title to the Property.

[SIGNATURES START ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the Effective Date.

CITY: **CITY OF SAN BRUNO**
a general law city and municipal corporation

by: _____
Jovan D. Grogan, City Manager

ATTEST:

Melissa Thurman, City Clerk

APPROVED AS TO FORM:

Marc Zafferano, City Attorney

DEVELOPER: **SAN BRUNO INN, LP**
a California limited partnership

by: _____
Suresh Gandhi, its General Partner

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

