

ORDINANCE NO.

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF MOUNTAIN VIEW AND
LINKEDIN CORPORATION FOR THE
LINKEDIN MIDDLEFIELD CAMPUS

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY
ORDAIN AS FOLLOWS:

Section 1. Findings and Purpose. The City Council of the City of Mountain View
does hereby find as follows:

1. 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 to 65869.5, authorizing municipalities to enter into Development Agreements in connection with the development of real property within their jurisdiction by qualified applicants with a requisite legal or equitable interest in the real property which is the subject of such Development Agreement.

2. LinkedIn Corporation ("Applicant") has a legal interest in certain real property located in the City consisting of approximately 28.7 acres and commonly known as 1100 West Maude Avenue, 700 East Middlefield Road, and 800 East Middlefield Road (collectively, the "Property").

3. Applicant desires to redevelop the Property by demolishing the buildings located at 1101 West Maude Avenue and 800 East Middlefield Road and building three new office buildings and two parking structures in the vacated areas of the Property. The three office buildings presently located at 700 East Middlefield Road will remain.

4. The City and Applicant have determined a Development Agreement is appropriate to facilitate development of the Project.

5. The purpose of Government Code Sections 65864 to 65869.5 is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations. As authorized by Government Code Section 65865(c), the City adopted Ordinance No. 20.94 on November 9, 1994, establishing the procedures and requirements for consideration of development agreements within the City. City Code Section

36.54.15(a)(1-7) contains the required findings for adoption of the Development Agreement, and all findings are made as follows in Paragraphs 6 through 17 below.

6. The Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the General Plan for the High-Intensity Office land use designation which allows intensities up to 1.0 FAR for highly sustainable developments which provide innovative site, architectural, and landscape designs and transportation demand management measures which support the City's goals for reducing trips and transit-oriented developments in the East Whisman Change Area. The project provides LEED® Platinum-designed buildings which incorporate roof-mounted photovoltaic panels to generate energy for the sites, native plantings, planted terraces and roofs, and the use of recycled water inside the buildings and for the landscaping; and a Transportation Demand Management (TDM) Program which will reduce peak-hour trips to the site by 22 percent.

7. The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located because the proposal clearly demonstrates superior site and building design and compatibility with surrounding uses and developments by providing appropriate building setbacks from the public right-of-way; innovative architecture which responds to the project site and surroundings; the implementation of bird-safe building design; providing all the project parking within parking structures; and a high-intensity office use compatible with the surroundings.

8. The Development Agreement is in conformity with the public convenience, general welfare, and good land use practice because the design of the buildings and proposed office use are compatible with the proposed P Zoning District development standards and allowable land uses as well as the surrounding office developments.

9. The Development Agreement will not be detrimental to the health, safety, and general welfare of the community because the proposed office development is consistent with the provisions of the General Plan as the project design is based on policy direction from the 2030 General Plan.

10. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values because the development of the project site with office buildings is compatible with the surrounding office developments.

11. The Development Agreement is needed by the Applicant due to the complexity, cost, or infrastructure requirements for development to allow for flexibility in the timing and phasing of the project because construction of a project of this size and

extent would otherwise exceed the City's standard approval and permit extension period.

12. The Development Agreement is advantageous to and benefits the City because the Applicant will provide a \$350,000 public benefit fee for the proposed seven-year Development Agreement as well as numerous other community benefits.

13. The Development Agreement for 700 East Middlefield Road, 1100 West Maude Avenue, and 800 East Middlefield Road has been reviewed by the City Attorney.

14. The Development Agreement complies with the California Environmental Quality Act (CEQA) because an Environmental Impact Report (EIR) has been prepared and circulated for public comment for the required 45 days, which ended on July 16, 2018. Staff received seven comment letters on the Draft EIR and has provided a response to these comments in the Final EIR document. All significant impacts of the project have been mitigated to less than significant with the incorporation of mitigation measures and standard City conditions of approval, with the exception of significant unavoidable impacts to 46 freeway segments under Existing With Project conditions, two intersections under Background with Project conditions and five intersections and 49 freeway segments under Near-Term Cumulative with Project conditions for which a Statement of Overriding Considerations and Mitigation, Monitoring, and Reporting Program will be adopted.

15. The City has determined that the Project is a development for which a Development Agreement is appropriate. A Development Agreement will improve the potential for the Project to be constructed in an orderly fashion, along with the significant Project benefits such as the financial contributions by the Applicant and otherwise achieve the goals and purposes of Article XVI, Division 14 of the City Code related to Development Agreements.

16. In exchange for significant public benefits of the Project and the infrastructure improvements required for the Project, the Applicant desires to receive assurances that the City shall grant permits and approvals required for the development of the Project in accordance with procedures provided by law and in this Development Agreement, and that the Applicant may proceed with the Project in accordance with existing City laws, with extended expiration dates for entitlements up to seven (7) years from the Commencement Date as defined in the Development Agreement. In order to effectuate these purposes, the parties desire to enter into this Development Agreement.

17. On November 14, 2018, after conducting a duly noticed public hearing pursuant to Article XVI, Division 16 of the City Code, the Zoning Administrator

recommended that the proposed terms of a Development Agreement be approved by the City Council.

Section 2. The City Council finds that entering into that certain Development Agreement entitled "DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MOUNTAIN VIEW AND LINKEDIN CORPORATION FOR THE LINKEDIN MIDDLEFIELD CAMPUS," hereafter is consistent with the City's General Plan and the City's Zoning Ordinance, and provides substantial public benefits to persons residing or owning property outside the boundary of the Property and beyond the exactions for public benefits required in the normal development review process under Federal, State, or local law. The Council further finds that the Development Agreement is in compliance with Government Code Sections 65864 through 65869.5 and Article XVI, Division 14 of the City Code and, therefore, may be approved.

Section 3. The City Council hereby approves and adopts the Development Agreement which shall be dated upon execution by the parties on or following the effective date of this Ordinance.

Section 4. The City Council authorizes and directs the City Manager to execute the Development Agreement attached hereto in substantially final form as Exhibit A.

Section 5. The provisions of this ordinance shall be effective thirty (30) days from and after the date of its adoption.

Section 6. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 7. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction and a list of the places where copies of the proposed ordinance are posted.

DP/2/ORD
807-12-11-18o-1

Exhibit: A. Development Agreement

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MOUNTAIN VIEW AND
LINKEDIN CORPORATION
FOR THE LINKEDIN
MIDDLEFIELD CAMPUS
[_____], 2018

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**DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF MOUNTAIN VIEW AND LINKEDIN CORPORATION**

THIS DEVELOPMENT AGREEMENT (this "Development Agreement") is made and entered into this _____ day of _____ 2018, by and between the CITY OF MOUNTAIN VIEW, a California Charter City and municipal corporation, organized and existing under the laws of the State of California (the "City"), and LINKEDIN CORPORATION, a Delaware corporation ("Owner"), pursuant to Government Code Sections 65864 *et seq.*

RECITALS

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development, the Legislature of the State of California enacted Sections 65864 *et seq.* of the Government Code ("Development Agreement Legislation"), which authorizes the City and any person holding a legal or equitable interest in the subject real property to enter into a development agreement, establishing certain development rights in the property, which is the subject of the development project application.

B. Pursuant to Government Code Section 65865, the City has adopted procedures and requirements for consideration of development agreements, Section 36.54 of the Mountain View City Code ("City Code"). This Development Agreement has been processed, considered, and executed in accordance with such procedures and requirements.

C. Owner has a legal interest in certain real property located in the City consisting of approximately 28.7 acres and commonly known as 1100 West Maude Avenue, 700 East Middlefield Road, and 800 East Middlefield Road (collectively, the "Property"), which Property is described in the attached Exhibit A, and shown on the map attached as Exhibit B.

D. Owner desires to redevelop the Property by demolishing the buildings located at 1100 West Maude Avenue and 800 East Middlefield Road and building three (3) new office buildings and two parking structures in the vacated areas of the Property (the "Project"). The three (3) office buildings presently located at 700 East Middlefield Road will remain. Each of the three new office buildings (each, a "Building") will be six (6) stories and will contain approximately 763,000 square feet of new office space. The two (2) parking structures will each have seven (7) levels, including one (1) level below grade, and will provide a total of approximately 2,913 parking spaces. The completed Project (including the three (3) existing buildings at 700 East Middlefield Road) will have approximately 1,078,000 square feet of floor area and, after taking into account the

floor area of the demolished buildings, will result in a net increase in floor area of approximately 612,000 square feet. The owner intends to develop the project in two (2) or more phases. The Buildings will be certified LEED® Platinum.

E. The Property is located within the East Whisman Change Area under the City's 2030 General Plan (the "General Plan"), which was adopted on July 10, 2012, by Resolution No. 17710. The City is in the process of developing an East Whisman Precise Plan (the "Precise Plan") for the area designated in the General Plan as the East Whisman Change Area (the "Precise Plan Area") that will include development standards for new development within the Precise Plan Area. Under the General Plan, the Property is designated "High-Intensity Office," which allows development at a floor area ratio ("FAR") of up to 1.0 for projects with measures for highly sustainable development consistent with the City's Zoning Ordinance or Precise Plan standards. As of the date of this Development Agreement, the City has not adopted a Precise Plan and the planning process is not yet completed. However, the City anticipates that in connection with the planning process, it will consider whether to authorize a new development impact fee that would apply to new development within the Precise Plan Area as one means of financing infrastructure improvements that may be necessary to support future growth within the area, as called for in the General Plan.

F. Prior to or concurrently with approval of this Development Agreement, the City has taken several actions to review and plan for the future development of the Project. These actions include the following:

1. **Environmental Impact Report.** The environmental impacts of the Project, including the Project Approvals and the Subsequent Approvals, as defined below, and alternatives to the Project, have properly been reviewed and evaluated by the City pursuant to the California Environmental Quality Act, Public Resources Code Sections 21000 *et seq.* ("CEQA"). Pursuant to CEQA and in accordance with the recommendation of the City's Environmental Planning Commission (the "Planning Commission"), the City Council certified a final Environmental Impact Report for the Project (the "EIR") by Resolution No. [_____]. As required by CEQA, the City adopted written findings and a mitigation monitoring and reporting program.

2. **Zoning Amendment.** Following review and recommendation by the Planning Commission, and after a duly noticed public hearing and certification of the EIR, the City Council approved an amendment to the City's Zoning Ordinance to rezone the Property from the Limited Industrial (ML) Zoning District to the Planned Community Zoning District by Ordinance No. [_____] (the "Zoning Amendment"). The purpose of the Zoning Amendment was to allow the Owner to develop office uses on the Property up to a FAR of 1.0, consistent with the General Plan's land use designation for the Property as High-Intensity Office.

3. **Planned Community Permit.** Following review and recommendation by the Planning Commission, and after a duly noticed public hearing and certification of the EIR, the City Council approved a Planned Community Permit pursuant to Section 36.50.30 of the City Code by Resolution No. [_____] (the “Planned Community Permit”).

4. **Heritage Tree Removal Permit.** Following review and recommendation by the Planning Commission, and after a duly noticed public hearing and certification of the EIR, the City Council approved a Heritage Tree Removal Permit for the removal of 138 Heritage Trees from the Property by Resolution No. [_____] (the “Heritage Tree Removal Permit”).

5. **Development Review Permit.** Following review and recommendation by the Planning Commission, and after a duly noticed public hearing and certification of the EIR, the City Council approved a Development Review Permit for the Project by Resolution No. [_____] (the “Development Review Permit”).

6. **Parcel Map.** Following review and recommendation by the Planning Commission, and after a duly noticed public hearing and certification of the EIR, the City Council approved a Parcel Map for the Project merging all of the parcels comprising the Property into one parcel by Resolution No. [_____] (the “Parcel Map”).

The approvals described in this Recital F, together with this Development Agreement, are collectively referred to as the “Approvals.”

G. The City is desirous of encouraging quality economic growth and expanding its employment base within the City, thereby advancing the interests of its citizens, taken as a whole. The City has determined that the Project complies with the plans and policies set forth in the General Plan.

H. A primary purpose of this Development Agreement is to assure that the Project can proceed without disruption caused by a change in the City’s planning policies and requirements following the Approvals. Owner also desires the flexibility to develop the Project in phases and to ensure that the Approvals remain valid over the projected development period.

I. The City has determined that, by entering into this Development Agreement, the City is receiving assurances of orderly growth and quality development in the Project area in accordance with the goals and policies set forth in the General Plan, and the City will receive certain community benefits.

J. The City anticipates receiving a public benefit fee in the amount of Three Hundred Fifty Thousand Dollars (\$350,000) to be paid to the City by Owner within twenty (20) days of the receipt by Owner of a copy of this Development Agreement duly authorized and executed on behalf of the City. Additional public benefits of the Approvals and this Development Agreement are described in Section 3.1. Owner recognizes it is being afforded greater latitude concerning long-term assurances for development of the Project in exchange for agreeing to contribute greater public benefits than could otherwise be required as part of the requirements imposed for the Approvals, and does so freely and with full knowledge and consent. The City will further benefit from an increase in the likelihood that the public benefits which are reflected in the conditions to the Approvals will be realized by the City because this Development Agreement will increase the likelihood that the Project will be completed pursuant to the Approvals.

K. For the reasons stated herein, among others, the City and Owner have determined that the Project is a development for which a development agreement is appropriate. This Development Agreement will, in turn, eliminate uncertainty in planning for and securing orderly development of the Project. The City has also determined that the Project presents public benefits and opportunities, and will strengthen the City's economic base with high-quality, long-term jobs, in addition to shorter-term construction jobs, generate revenues for the City in the form of one-time and annual fees, taxes, and other fiscal benefits, promote high-quality design and development, enhance the use of transit, and otherwise achieve the goals and purposes for which the Development Agreement Legislation was adopted.

L. The terms and conditions of this Development Agreement have undergone extensive review by City staff, the Zoning Administrator, and the City Council at publicly noticed meetings and have been found to be fair, just, and reasonable.

M. The City has given notice of its intention to adopt this Development Agreement, conducted public hearings thereon pursuant to Government Code Section 65867, and the City Council hereby finds that: (1) the provisions of this Development Agreement and its purposes are consistent with the General Plan, Chapter 36 (Zoning) of the City Code (the "Zoning Ordinance"), and CEQA; (2) the Project and this Development Agreement are compatible with the uses authorized in, and the regulations prescribed for, the General Plan land use district in which the real property is located; (3) this Development Agreement complies in all respects with the City's Ordinance No. 9.00, as adopted effective May 1, 2000 (the "Development Agreement Ordinance"); (4) this Development Agreement will not be detrimental to the health, safety, and general welfare of the community; (5) this Development Agreement will not adversely affect the orderly development of property or the preservation of property values; (6) this Development Agreement would facilitate the development of the Property in the manner proposed and is needed by the Owner due to the timing

constraints on the redevelopment of the Property; (7) the proposed development should be encouraged in order to meet important economic, social, environmental, or planning goals of the City; (8) the Owner has made commitments to a high standard of quality; (9) this Development Agreement is in conformity with public convenience, general welfare, and good land use practice; and (10) this Development Agreement is advantageous to, and benefits, the City.

NOW, THEREFORE, the City and Owner agree as follows:

ARTICLE I PROPERTY AND TERM

1.1 Property Subject to the Development Agreement. All of the Property shall be subject to this Development Agreement. Owner represents and agrees that all persons holding legal or equitable title in the Property shall be bound by this Development Agreement.

1.2 Term of Development Agreement and Effective Date. The term of this Development Agreement (the "Term") shall commence upon the effective date of the ordinance approving this Development Agreement (the "Effective Date"), and shall continue in full force and effect until the "Expiration Date" determined in accordance with Section 1.3 (and except as otherwise provided in Section 6.3).

1.3 Expiration Date. Except as otherwise provided in Section 6.3, the term of this Development Agreement shall expire on the seventh (7th) anniversary of the Effective Date (the "Expiration Date"); provided, however, that the Expiration Date may be extended by Owner one (1) time for up to three (3) years if Owner has obtained a Certificate of Occupancy (or temporary Certificate of Occupancy) for at least one (1) of the new Buildings to be constructed on the Property. Such extension shall be exercised by Owner by delivering written notice to the City and One Hundred Fifty Thousand Dollars (\$150,000) on or before the Expiration Date.

ARTICLE II DEVELOPMENT OF THE PROPERTY

2.1 Project Development. Development of the Project will be governed by the Approvals and this Development Agreement. The City acknowledges that the timing of the completion of development of the Project is subject to market forces, and Owner shall have no liability whatsoever if the contemplated development of the Project fails to occur.

2.2 Right to Develop. Owner shall have the vested right to develop the Project in accordance with: (a) the terms and conditions of this Development Agreement and

the Approvals and any amendments to any of them as shall, from time to time, be approved pursuant to this Development Agreement; and (b) the Existing Standards (as defined in Section 2.5(b)). Nothing contained herein shall restrict the City's discretion to approve, conditionally approve, or deny amendments or changes to the Approvals proposed by Owner. Except as is expressly provided otherwise in this Development Agreement, no future modifications of the following shall apply to the Project: (a) the Mountain View General Plan, (b) the City Code, (c) applicable laws and standards adopted by the City which purport to: (i) limit the use, subdivision, development density, design, parking ratio or plan, schedule of development or other regulations of the Property or the Project; or (ii) impose new fees, dedications, improvements, other exactions, design features, or moratoria upon development, occupancy, or use of the Property or the Project; or (d) any other Existing Standards. Without limiting the foregoing, any future policies or requirements of the East Whisman Precise Plan adopted by the City shall not apply to the Project to the extent inconsistent with the Approvals and this Development Agreement.

2.3 Further Approvals. The City agrees to grant and implement the necessary land use, zoning, or site plan or subdivision approvals and to grant other approvals and permits, including, without limitation, any ministerial approvals, that will accomplish development of the Project for the uses and to the density or intensity of development described and shown in the Approvals (the "Subsequent Approvals"). The conditions, terms, restrictions, and requirements for such Subsequent Approvals shall be in accordance with the Existing Standards (except as otherwise provided in Section 2.9) and shall not prevent development of the Property for the uses provided under the Approvals, the Existing Standards, and this Development Agreement ("Permitted Uses"), or reduce the density and intensity of development, or limit the rate or timing of development set forth in this Development Agreement, as long as Owner is not in default under this Development Agreement.

2.4 Permitted Uses. The Permitted Uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, the installation, location, and maintenance of on-site and off-site improvements, the installation and location of public utilities, and other terms and conditions of development applicable to the Property shall be those set forth in this Development Agreement, the Approvals, and any amendments to this Development Agreement or the Approvals made in accordance with this Development Agreement, and shall be considered vested for the Term.

2.5 Development Timing and Restrictions.

(a) The parties acknowledge that Owner cannot at this time predict when, or the rate at which, phases of the Project would be developed. Such decisions depend upon numerous factors which are not all within the control of Owner. It is the intent of

the City and Owner that, notwithstanding any future amendment to the General Plan, the Zoning Ordinance or any other ordinance, policy, plan, rule, or procedure of the City or any other of the Existing Standards or the adoption of any ordinance, policy, plan, rule, or procedure (whether amended or adopted by means of an ordinance, City Charter amendment, initiative, resolution, policy, order, or moratorium, initiated or instituted for any reason whatsoever and adopted by the City Council, Planning Commission, Zoning Administrator, or any other Board, Commission, or department of the City or any officer or employee thereof, or by the electorate by referendum or initiative), Owner shall have the right to develop the Project in such order and at such rate and times as Owner deems appropriate within the exercise of its sole and subjective business judgment. Such right is consistent with, and necessary to, the purpose and understanding of the parties to this Development Agreement, and that without such a right, Owner's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Legislation and this Development Agreement. Build-out of the Project shall not be limited by any events outside the exclusive control of Owner.

(b) Development of the Property shall be subject to all, and only, the standards in the General Plan, the City Code, the zoning classification and standards and other rules, regulations, ordinances, and official policies applicable to the Project on the Effective Date (collectively, the "Existing Standards"), including all rates and amounts of various kinds applicable thereunder as of the Effective Date, except as otherwise provided herein. The provisions of this Development Agreement shall supersede any City rule, regulation, ordinance, or official policy which is inconsistent with the terms of this Development Agreement and the Approvals. If and to the extent any changes in the Existing Standards (whether adopted by means of an ordinance, City Charter amendment, initiative, resolution, policy, order, or moratorium, initiated or instituted for any reason whatsoever and adopted by the City Council, Planning Commission, Zoning Administrator, or any other Board, Commission, or department of the City or any officer or employee thereof, or by the electorate by referendum or initiative) are in conflict with the Approvals, the Existing Standards, or the provisions of this Development Agreement, then the Approvals, the Existing Standards, and the provisions of this Development Agreement shall prevail. Notwithstanding the foregoing the parties agree the time limits for completion of offsite improvements as specified in the City's standard improvement agreement shall govern.

(c) If any governmental entity or agency other than the City passes any State or Federal law or regulation after the Effective Date which prevents or precludes compliance with one (1) or more provisions of this Development Agreement or requires changes in plans, maps, or permits approved by the City notwithstanding the existence of this Development Agreement, then the provisions of this Development Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new law or regulation. Immediately after enactment of any such new law or

regulation, 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 Development Agreement. In addition, Owner shall have the right to challenge the new law or regulation preventing compliance with the terms of this Development Agreement, and, to the extent such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect; provided, however, that Owner shall not develop the Project in a manner clearly inconsistent with a new law or regulation applicable to the Project and adopted by any governmental entity or agency other than the City or any entity affiliated with the City, except to the extent that enforcement of such law or regulation is stayed or such law or regulation is repealed or declared unenforceable or such law or regulation is not applicable to projects as to which a development agreement has been executed.

2.6 Development Fees, Assessments, Exactions, and Dedications. Except as otherwise provided in this Development Agreement, Owner shall pay all applicable Citywide fees, assessments, dedication formulae, and taxes payable in connection with the development, build-out, occupancy, and use of the Project pursuant to this Development Agreement that apply uniformly to all similar developments in the City at the time Owner applies for a building permit approval in connection with the Project; provided, however, that Owner shall not be required to pay any development impact fees adopted for new development within the Precise Plan Area at a rate in excess of the amount set forth in Section 3.1(b)(i) for all such impact fees or any community benefit fee in excess of the amount set forth in Section 3.3. Owner shall be subject to all increases in fees established by the City from time to time during the Term and that generally apply to all developments of the same type in the City. No new fee, assessment, exaction, or required dedication policy not in effect on the date on which Owner has applied for approval of a building permit for development subject to this Development Agreement shall be imposed on the Project unless it is imposed uniformly on all similar types of development City-wide and is not limited in fact to the Project. If any building permit lapses after issuance and the permit can be renewed or reissued under the City Code, the fees in effect at the time of renewal or reissuance shall apply.

2.7 Extension of Tentative Maps.

(a) To the extent allowed by the Subdivision Map Act (Government Code Sections 66410 *et seq.*), the terms of the following shall automatically be extended for the duration of this Development Agreement:

(i) Any tentative map or vesting tentative map which may be adopted for the Project, including, without limitation, a tentative map for the merger of the parcels comprising the Property into one (1) parcel;

(ii) Any amendment (or reconfiguration) of any such maps (including any lot line adjustment or merger of lots within such a map); or

(iii) Any other map relating to a subdivision of any part of the Property filed prior to the termination of this Development Agreement.

(b) If, notwithstanding the provisions of Section 2.7(a), the tentative map or vesting tentative map which has been, or may be, adopted for the Project expires during the Term of this Development Agreement, then the City agrees that it will accept, process, and review in good faith and in a timely manner the tentative map or vesting tentative map subsequently filed with respect to the Property and that the consideration and approval of such tentative map or vesting tentative map, provided the map is consistent with the original map, shall be governed solely by the Existing Approvals and the Existing Standards, and no conditions shall be imposed on such approval which are not required by the Existing Approvals.

2.8 Mitigation Measures and Conditions. If Owner constructs the Project, Owner shall satisfy and comply with the Mitigation Measures as set forth in the EIR and the mitigation monitoring and reporting program, as well as all Conditions of Approval for the project which are also set forth and incorporated in this Development Agreement by reference as Exhibit C.

2.9 Applicable Codes. Unless otherwise expressly provided in this Development Agreement, the Project shall be constructed in accordance with the provisions of the California Building Code, the City's Green Building Code, Mechanical, Plumbing, Electrical, and Fire Codes as adopted by the City of Mountain View, City standard construction specifications and Title 24 of the California Code of Regulations, relating to building standards, in effect at the time of approval of the appropriate building, grading or other construction permits for the Project.

The Project will require a City Excavation Permit(s) for any infrastructure improvements in the City's right-of-way or City easements. Such improvements will be constructed in accordance with the latest version in effect at the start of construction of such infrastructure, including, but not limited to, the Standard Provisions City of Mountain View, the Standard Details of the City of Mountain View, the Standard Specifications of the Department of Transportation of the State of California (Caltrans) dated 2015 and subsequent updates to that 2015 edition, the Standard Plans of the Department of Transportation of the State of California (Caltrans) dated 2015, and subsequent updates to that 2015 edition, the latest version of the California Manual of Uniform Traffic Control Devices and the Project Improvement Plans prepared by the Project's Engineer(s) and as approved by the City Engineer.

The Project shall apply for a Caltrans Encroachment Permit for all work within Caltrans' jurisdiction. Work within the State right-of-way must be in accordance with Caltrans requirements. The Project shall apply for the appropriate Encroachment Permit (or as otherwise required by City of Sunnyvale) with the City of Sunnyvale for all work within the City of Sunnyvale's jurisdiction. Work within the City of Sunnyvale right-of-way must be in accordance with City of Sunnyvale requirements.

2.10 Floor Area Ratio. Consistent with the Approvals, Owner has the vested right to develop the Project at a FAR of up to 0.86 for the Term of this Development Agreement.

ARTICLE III PUBLIC BENEFITS

3.1 Public Benefit to be Provided by Owner. In consideration of providing certainty in the approval of the Project and greater assurance that once approved, the Project can be built, and as authorized by the Development Agreement Legislation, the Owner shall provide the City with the following public benefits:

(a) **Public Benefit Fee.** Owner shall pay a public benefit fee in the amount of Three Hundred Fifty Thousand Dollars (\$350,000) (the "Public Benefit Fee") to the City within twenty (20) days of the receipt by Owner of a copy of this Development Agreement authorized and executed on behalf of the City. If Owner fails to pay such Public Benefit Fee, this Development Agreement will automatically terminate, which shall be the sole remedy of the City with respect to such failure.

(b) **Future East Whisman Development Impact Fees.** Although the City has not yet adopted a development impact fee ordinance for the Precise Plan Area, covering such items as transportation impact fees and water and sewer capacity charges or infrastructure fees applicable to projects in the Precise Plan Area (collectively, the "East Whisman Fees"), the parties agree that it is appropriate for the Owner to pay its fair share of any such fees that may be adopted in the future by the City, subject to the limitations set forth in this Development Agreement.

(i) Subject to adjustment as hereinafter set forth, for the net new square footage created on the Property prior to the adoption of an ordinance establishing a rate for the East Whisman Fees, Owner agrees to pay to the City a fee in the amount of Thirty One and Dollars and Five Cents (\$31.05) multiplied by the net new square footage of the Building that is covered by the building permit. Such fee shall be payable at the time a building permit is issued for any Building on the Property. As used in this Development Agreement, "net new square footage" means the additional square footage of floor area in new Buildings after the subtracting the floor area of the buildings at 1100 West Maude Avenue (89,118 square feet of floor area) and 800 East

Middlefield Road (62,246 square feet of floor area). For purposes of illustration only, if Owner obtains a building permit for its first Building in the Project and the Building has two hundred forty thousand (240,000) square feet of floor area, the fee pursuant to this subsection would be determined after crediting the full amount of the floor area of the 1100 West Maude Avenue and 800 East Middlefield Road buildings (a total of 151,364 square feet) against the new floor area for a total of 88,636 net new square feet. At the rate of \$31.05 per net new square foot, the fee would be Two Million Seven Hundred Fifty-Two Thousand One Hundred Forty-Seven Dollars (\$2,752,147) (\$31.05 per square foot times 88,636 net new square feet). For purposes of illustration only, the Parties agree that if the maximum net new square footage for the entire Project is 612,000 square feet and if City has not adopted an ordinance establishing a rate for the East Whisman Fees, the maximum amount to be paid pursuant to this section at the time all building permits are issued for the Project would be Nineteen Million Two Thousand Six Hundred Dollars (\$19,002,600), which amount will be subject to reduction pursuant to subsections (ii) and (iii).

(ii) Upon adoption of an ordinance establishing a rate for the East Whisman Fees, the parties agree that if the aggregate rate for the East Whisman Fees is less than Thirty-One Dollars and Five Cents (\$31.05) per net new square foot, then Owner shall be entitled to a credit against future East Whisman Fees to be assessed for any future Building on the Property; provided, however that if the Owner has paid all of the fees that are due in connection with all of the Buildings pursuant to this Section 3.1(b) before the ordinance for the East Whisman Fees is adopted, the City shall refund to Owner such excess amount within thirty (30) days after such ordinance is adopted. The amount of the credit or refund shall be determined by applying the following formula: with respect to the Building(s) for which a building permit was previously issued, the credit or refund shall equal the net new square footage of such Building(s) multiplied by the difference between: (A) Thirty-One Dollars and Five Cents (\$31.05); and (B) the rate of the East Whisman Fees established by the ordinance. In the case of a refund, this additional payment shall be made within thirty (30) days of effective date of the ordinance.

(iii) For building permit applications that are approved for a Building after the City's adoption of an ordinance establishing a rate for the East Whisman Fees, Owner will be required to pay the East Whisman Fees, above; provided, however, Owner shall not be required to pay any development impact fees adopted for new development within the Precise Plan Area at a rate that exceeds Thirty One Dollars and Five Cents (\$31.05) per net new square foot in the aggregate for all of such fees.

(iv) In addition to any other remedies provided for by this Development Agreement, the failure of Owner to timely pay any applicable fees pursuant to this section shall be grounds for the City to refuse issuance of a Certificate of Occupancy for any Building or Parking Structure.

(c) **Bicycle Improvements.** Owner has entered into an agreement with the City of Sunnyvale to complete off-site bicycle improvements on both sides of Maude Avenue from the east boundary of the Project to Pastoria Avenue in the City of Sunnyvale (the “Maude Bicycle Improvements”). Owner and the City desire for the Maude Bicycle Improvements to be integrated with the Project and for the Maude Bicycle Improvement to extend from the east boundary of the Project to SR 237. Including the segment from such east boundary to SR 237, the Maude Bicycle Improvements are more particularly described on Exhibit D, attached hereto. Owner shall coordinate with the City of Sunnyvale for the construction of the Maude Bicycle Improvements in the City of Sunnyvale.

3.2 Completion of Construction of Certain Improvements. As to improvements required by other Sections of this Development Agreement which expressly refer to the provisions of this Section 3.2, Owner shall cause such improvements to be completed prior to the issuance of a certificate of occupancy for the first to be constructed of the Buildings or the; first to be constructed of the Parking Structures; provided, however, that occupancy of such structure shall not be delayed if the delay in completion of the required improvement was due to Force Majeure Delay. As used in this Development Agreement, the term “Force Majeure Delay” means any delay in the performance of an obligation required by this Development Agreement (or any other agreement referred to herein), resulting from causes beyond the control of Owner using commercially reasonable efforts. Such causes include, without limitation, acts of God or of public enemies, war, invasion, insurrection, rebellion, riots, terrorist acts, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes, unavailability of equipment, supplies, materials or labor, unforeseen or previously unknown environmental conditions, and unusual weather delays, or any other similar cause.

3.3 Trip Cap. Owner will be required to implement a Transportation Demand Management (“TDM”) program to reduce a.m. peak-hour vehicle trips to the Project site. During the term of this Development Agreement (including extensions of the term), Owner will be required to maintain a TDM program for the entire Project site, which will achieve a twenty-two percent (22%) reduction in peak-hour vehicle trips from the average vehicle trip rates per building area established by the Institute of Transportation Engineers (ITE) Trip Generation Manual, 10th Edition (2017) for General Office (LU 710), which results in a trip cap of 977 a.m. peak-period trips and 968 p.m. peak period trips, and which equates to a maximum of 0.90 in peak-hour vehicle trips to the site per 1,000 square feet of floor area as per the TDM plan for the project prepared by Fehr & Peers dated October 24, 2018. After the expiration of this Development Agreement, the Project will be required to meet any other peak-hour trip limitation applicable under the East Whisman Precise Plan.

ARTICLE IV OBLIGATIONS OF THE PARTIES

4.1 **Owner.** In consideration of the City entering into this Development Agreement, Owner has agreed that development of the Project during the Term of this Development Agreement shall be in conformance with all of the terms, covenants, and requirements of this Development Agreement and the Approvals, as they may each be hereafter amended with the consent of the City and Owner in accordance with the provisions of Sections 6.6, 6.7, 6.9, or 6.10.

4.2 **City.**

(a) **City's Good Faith in Proceedings.** As further provided in Section 2.3, in consideration of Owner entering into this Development Agreement, the City agrees that it will accept, process, and review in good faith and in a timely manner, all applications related to the Project for environmental and design review, subdivision of the Property, building permits, or other permits or entitlements for use of the Property, in accordance with the terms and spirit of this Development Agreement.

(b) **Additional Approvals.** The City shall cooperate with Owner in its endeavors to obtain any other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as set forth in Section 7.3.

ARTICLE V DEFAULT, REMEDIES, TERMINATION

5.1 **Remedies for Breach.** The City and Owner acknowledge that the purpose of this Development Agreement is to carry out the parties' objectives and local, regional, and Statewide objectives by developing the Project. The parties acknowledge that the City would not have entered into this Development Agreement had it been exposed to damage claims from Developer for any breach thereof. As such, the parties agree that in no event shall Developer be entitled to recover monetary damages against the City for breach of this Development Agreement. Therefore, the City and Owner agree that in the event of a breach of this Development Agreement, each of the parties hereto may pursue the following: (a) specific performance; (b) suits for declaratory or injunctive relief; (c) suits for mandamus or special writs; or (d) cancellation of this Development Agreement. All of these remedies shall be cumulative and not exclusive of one another, and the exercise of any one (1) or more of these remedies shall not constitute a waiver or election with respect to any other available remedy.

5.2 **Notice of Breach.** Prior to the initiation of any action for relief specified in Section 5.1 above because of an alleged breach of this Development Agreement, the

party claiming breach shall, within thirty (30) calendar days of the inception of the alleged breach, deliver to the other party a written notice of breach (a "Notice of Breach"). The Notice of Breach shall specify with reasonable particularity the reasons for the allegation of breach and the manner in which the alleged breach may be satisfactorily cured. If, in the determination of the alleged breaching party, such event does not constitute a breach of this Development Agreement, the party to which the Notice of Breach is directed, within thirty (30) days of receipt of the Notice of Breach, shall deliver to the party giving the Notice of Breach a notice (a "Compliance Notice") which sets forth with reasonable particularity the reasons that a breach has not occurred.

5.3 Effect of Certain Defaults. Notwithstanding anything to the contrary herein contained, where a default has occurred only with respect to a particular lot or parcel, any remedy or right of termination arising hereunder shall apply solely to or with respect to such lot or parcel and affect only the owner thereof and the holders of the interest therein. No liability will be imposed against or apply to any parcel or portion of the Property with respect to which no default has occurred nor shall any obligation be imposed against or applied to the owner thereof. The owner of any portion of the Property shall have the right to request copies of notices of default given to the owner of any other portion of the Property. The City and any owners of other portions of the Property to whom such request has been made shall honor the same and provide such notice in the manner and to the address specified in the request.

5.4 Applicable Law/Attorneys' Fees. This Development Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either party because of breach of this Development Agreement or to enforce any provision of this Development Agreement, the prevailing party shall be entitled to reasonable attorneys' fees or arbitration costs and such other costs as may be found by the court or arbitrator.

ARTICLE VI ANNUAL REVIEW, PERMITTED DELAYS, AND AMENDMENTS

6.1 Annual Review. The annual review required by California Government Code, Section 65865.1 shall be conducted pursuant to City Code Section 36.54.30 by the Community Development Director every twelve (12) months from the Effective Date for compliance with the provisions hereof. The Community Development Director shall notify Owner in writing of any evidence which the Community Development Director deems reasonably required from Owner in order to demonstrate good-faith compliance with the terms of this Development Agreement. Such annual review provision supplements, and does not replace, the provisions of Section 5.2 above whereby either the City or Owner may, at any time, assert matters which either party believes have not been undertaken in accordance with this Development Agreement by delivering a

written Notice of Breach and following the procedures set forth in said Section 5.2. Owner shall pay the City's actual costs for its performance of the Annual Review, including staff time if and to the extent that more than two (2) hours of staff time is required to perform the annual review.

6.2 Permitted Delays. In the event of changed conditions, changes in State, local, or Federal laws or regulations, Force Majeure Delay, delays caused by governmental agencies in issuing permits and approvals, or other circumstances which substantially interfere with carrying out the Project, as the Project has been approved, or with the ability of either party to perform its obligations under this Development Agreement, the parties agree to negotiate in good faith to modify such obligations to allow the Project to proceed as planned to the extent practicable.

6.3 Extension of Term Due to Moratoria. In the event of any publicly declared moratorium or other interruption in the issuance of permits, approvals, agreements to provide utilities or services or other rights or entitlements by any State, local, or Federal governmental agency or public utility which could postpone the construction of improvements at the Project, the Term of this Development Agreement shall be extended without further act of the parties by a period equal to the duration of any such moratorium or interruption, irrespective of whether or not such moratorium or interruption actually had the effect of postponing construction. Nothing in this Section 6.3 is intended, however, to confer on the City or any related agency any right to impose any such moratorium or interruption.

6.4 Certain Waivers. The City shall have the right to waive or reduce the burden of provisions of the Approvals as they apply to any portion of the Property, with the consent of the owner of such portion, so long as: (a) the waiver, reduction, or revision does not conflict with the land uses or improvement of the Approvals (or any permit or approval granted thereunder); (b) such reduction or waiver does not increase the burden imposed upon a portion of the Property owned by any other owner; (c) the waiver, reduction, or revision is not inconsistent with the purpose and goals of the General Plan; and (d) such waiver or reduction is made with the written consent of the owner of the portion of the Project as to which such waiver or reduction is granted.

6.5 Life Safety Matters. As provided in Section 2.9, nothing contained herein shall be deemed to prevent adoption and application to improvements upon the Property of laws, ordinances, uniform codes, rules, or regulations pertaining to or imposing life-safety, fire protection, mechanical, electrical, and/or building integrity requirements at the time permits for construction of such improvements are issued. This Section 6.5 is not intended to be used for purposes of general welfare or to limit the intensity of development or use of the Property, but to protect and recognize the authority of the City to deal with material endangerments to persons on the Property not adequately addressed in the Approvals.

6.6 Modification Because of Conflict with State or Federal Laws. In the event that State or Federal laws or regulations enacted after the Effective Date of this Development Agreement prevent or preclude compliance with one (1) or more provisions of this Development Agreement or require changes in plans, maps, or permits approved by the City, such modifications shall be governed by the provisions of Section 2.5(c) above. Any such amendment or suspension of this Development Agreement shall be approved by the City Council in accordance with the City Code and this Development Agreement and by Owner.

6.7 Amendment by Mutual Consent. This Development Agreement may be amended in writing from time to time by mutual consent of the City and Owner, subject to approval by the City Council (except as otherwise provided in Section 6.9), and in accordance with the procedures of State law and the City Code.

6.8 City Costs for Review. During the Term of this Development Agreement, Owner shall promptly reimburse the City for costs incurred by the City to have its staff, consultant, or outside counsel review, approve, or issue assignments, estoppel certificates, transfers, amendments to this Development Agreement, and the like.

6.9 Minor Amendments. Notwithstanding the provisions of Section 6.7, any amendments to this Development Agreement which do not relate to: (a) the term of the Development Agreement as provided in Section 1.2; (b) the right to develop, and Permitted Uses of, the Property as provided in this Development Agreement; (c) the general location of on-site and off-site improvements; (d) the density or intensity of use of the Project; (e) the maximum height or size of proposed buildings; or (f) monetary contributions by Owner as provided in this Development Agreement, shall be deemed "minor amendments" and shall not, except to the extent otherwise required by law, require notice or public hearing before either the Zoning Administrator or the City Council before the parties may execute an amendment hereto, provided that such amendment shall first be approved by Owner and the Community Development Director (or if the City does not then have a Community Development Director, then by the holder of the position which includes the majority of the planning responsibilities held, as of the date of this Development Agreement, by the Community Development Director). The foregoing notwithstanding, minor modifications to the Project as to the location, operational design, or requirements for maintenance of improvements shall be regarded as "minor amendments" subject to the provisions of this Section 6.9, and not "major modifications" subject to the provisions of Section 6.10.

6.10 Amendment of Approvals. Approval of any major modifications to the Project or Approvals requires City Council approval and the approval of Owner. Any of the following amendments to Approvals shall be deemed a "major modification" and shall require an amendment of this Development Agreement: (a) the term of the

Development Agreement as provided in Section 1.2; (b) the right to develop, and Permitted Uses of, the Property as provided in this Development Agreement; (c) the general location of on-site and off-site improvements; (d) the density or intensity of use of the Project; (e) the maximum height or size of proposed buildings; or (f) monetary contributions by Owner as provided in this Development Agreement. Such amendment shall be limited to those provisions of this Development Agreement, which are implicated by the amendment of the Approvals. Any other amendment of the Approvals shall not require amendment of this Development Agreement unless the amendment of the Approvals relates specifically to some provision of this Development Agreement.

6.11 Alternative Approvals. Notwithstanding any provisions in this Development Agreement, Owner may apply for, and the City may thereafter review and grant, in accordance with applicable law: (i) amendments or modifications to the Approvals; or (ii) other approvals (“Alternative Approvals”) for the development of the Property in a manner other than that described in the Approvals. The issuance of any Alternative Approval which approves a change in the Permitted Uses, density or intensity of use, height or size of buildings, provisions for reservation and dedication of land, conditions, terms, restrictions, and requirements relating to subsequent discretionary actions, monetary contributions by the Owner, or in any other matter set forth in this Development Agreement, shall not require or constitute an amendment to this Development Agreement, unless Owner and the City desire that such Alternative Approvals also be vested pursuant to this Development Agreement. If this Development Agreement is not so amended, it shall continue in effect unamended, although Owner shall also be entitled to develop the Property in accordance With the Alternative Approvals granted by the City, without such permits and approvals being vested hereby.

6.12 Cancellation by Mutual Consent. Except as otherwise permitted herein, this Development Agreement may be canceled in whole or in part only by the mutual consent of the City and Owner or their successors in interest, in accordance with the provisions of the City Code. Any fees paid pursuant to this Development Agreement prior to the date of cancellation shall be retained by the City.

ARTICLE VII COOPERATION AND IMPLEMENTATION

7.1 Cooperation. It is the parties’ express intent to cooperate with one another and to diligently work to implement all land use and building approvals for development of the Project in accordance with the terms hereof. The City will not use its discretionary authority in considering any application for a Subsequent Approval to change the policy decisions reflected by this Development Agreement or otherwise to prevent or delay development of the Project.

7.2 City Processing.

(a) **By City.** The City shall cooperate with Owner in a reasonable and expeditious manner, in compliance with the deadlines mandated by applicable statutes or ordinances, to complete all steps necessary for implementation of this Development Agreement and development of the Project in accordance herewith, including, without limitation, in performing the following functions to process the Project:

(i) Scheduling all required public hearings by the City Council, Planning Commission, Subdivision Committee, and Zoning Administrator in accordance with the City Council's regularly established meeting schedule for these bodies; and

(ii) Processing and checking all maps plans, land use permits, building plans and specifications, and other plans relating to development of the Project filed by Owner or its nominees.

(b) **By Owner.** When Owner elects to proceed with construction of the Project or any part thereof, Owner, in a timely manner, shall provide the City with all documents, applications, plans, and other information necessary for the City to carry out its obligations hereunder and Owner shall cause its planners, engineers, and all other consultants to submit in a timely manner all necessary materials and documents.

7.3 **Other Governmental Permits.** Owner shall apply prior to the expiration of the Term of this Development Agreement for approvals which may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. The City shall cooperate reasonably with Owner in its endeavors to obtain such permits and approvals. If, pursuant to the Existing Standards, such cooperation by the City requires the approval of the City Council, such approval cannot be predetermined because decisions are made by a majority vote of the City Council.

ARTICLE VIII TRANSFERS AND ASSIGNMENTS

8.1 **Transfers and Assignments.** From and after recordation of a memorandum form of this Development Agreement against the Property, Owner may assign this Development Agreement with the express written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Owner may assign this Development Agreement in whole or in part as to the Property or any portion thereof, in connection with any sale, transfer, or conveyance thereof, and upon the express written assignment by Owner and assumption by the assignee and the conveyance of

Owner's interest in the Property related thereto. Upon execution of an assignment agreement, Owner shall be released from any further liability or obligation hereunder related to the portion of the Property so conveyed and the assignee shall be deemed to be the "Owner," with all rights and obligations related thereto, with respect to such conveyed property. In the event of a transfer of a portion of the Property, Owner shall have the right to transfer its rights, duties, and obligations under this Development Agreement which are applicable to the transferred portion, and to retain all rights, duties, and obligations applicable to the retained portions of the Property. Prior to recordation of a memorandum form of this Development Agreement, any proposed assignment of this Development Agreement by Owner shall be subject to the prior written consent of the City Manager on behalf of the City and the form of such assignment shall be subject to the approval of the City Attorney, neither of which shall be unreasonably withheld.

8.2 Covenants Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants, and obligations contained in this Development Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all of the persons or entities acquiring the Property or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation, or otherwise), and assigns. All of the provisions of this Development Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Property hereunder, or with respect to any City-owned property: (a) is for the benefit of such properties and is a burden upon such property; (b) runs with such properties; (c) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such properties, or any portion thereof; and (d) shall benefit each property hereunder, and each other person or entity succeeding to an interest in such properties.

ARTICLE IX MORTGAGE PROTECTION; CERTAIN RIGHTS OF CURE

9.1 Mortgage Protection. This Development Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording a memorandum form of this Development Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Development Agreement shall be binding upon and effective against any person or

entity, including any deed of trust beneficiary or mortgagee (“Mortgagee”) who acquires title to the Property, or any portion thereof, by foreclosure, trustee’s sale, deed in lieu of foreclosure, or otherwise.

9.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 9.1 above, no Mortgagee shall have any obligation or duty under this Development Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, a Mortgagee shall not be entitled pursuant to this Development Agreement to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Development Agreement, or otherwise under the Approvals. Nothing in this Section 9.2 shall prevent or impair the right of any Mortgagee to apply to the City for the approval of entitlements to construct other or different improvements than the Project although this Development Agreement shall not be construed to obligate the City to approve such applications.

9.3 Notice of Default to Mortgagee. If the City receives a notice from a Mortgagee requesting a copy of any notice of default given Owner hereunder and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any Notice of Breach given to Owner with respect to any claim by the City that Owner has committed an event of default, and if the City makes a determination of noncompliance hereunder, the City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereon on Owner. Each Mortgagee shall have the right during the same period available to Owner 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 of Breach.

ARTICLE X GENERAL PROVISIONS

10.1 Project is a Private Undertaking. It is specifically understood and agreed by the parties that the development contemplated by this Development Agreement is a private development, that the City has no interest in or responsibility for or duty to third persons concerning any of said improvements, and that Owner shall have full power over the exclusive control of the Property herein described subject only to the limitations and obligations of Owner under this Development Agreement. Owner hereby agrees to and shall hold the City and its elected and appointed representatives, 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 Owner’s operations under this Development Agreement, excepting suits and actions brought by Owner for default of this Development Agreement by the City or arising from the actual or alleged negligence or willful

misconduct of the City or its elected and appointed representatives, officers, agents, and employees.

10.2 Certain Inflation Adjustments. To the extent provided in Sections 2.6 and 3.1(b), and only to the extent provided in these Sections, any fixed amounts applicable pursuant to that Section as of the date of this Development Agreement shall be adjusted as reflected in the fee schedule adopted annually by the City Council.

10.3 Notices, Demands, and Communications between the Parties. Formal written notices, demands, correspondence, and communications between the City and Owner will be sufficiently given if dispatched by first-class mail, postage prepaid, to the offices of the City and Owner indicated below. Such written notices, demands, correspondence, and communications may be sent in the same manner to such persons and addresses as either party may from time to time designate by mail as provided in this section:

City: City Manager's Office
City of Mountain View
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540
Attn: City Manager

with copy to: Office of the City Attorney
City of Mountain View
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540
Attn: City Attorney

Community Development Department
City of Mountain View
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540
Attn: Community Development Director

Owner: _____

with copy to: Paul Hastings LLP
515 South Flower Street, Suite 2500
Los Angeles, CA 90071
Attn: Mitchell B. Menzer

Notices delivered by deposit in the United States mail as provided above shall be deemed to have been served forty-eight (48) hours after the date of deposit. Copies of notices to Owner shall also be sent to other parties owning a portion of the Property who request to receive copies of such notice in accordance with the provisions of Section 5.3.

10.4 No Joint Venture or Partnership. Nothing contained in this Development Agreement or in any document executed in connection with this Development Agreement shall be construed as making the City and Owner joint venturers or partners.

10.5 Severability. Except as otherwise provided herein, if any provision of this Development Agreement is held invalid, the remainder of this Development Agreement shall not be affected and shall remain in full force and effect unless amended or modified by mutual consent of the parties.

10.6 Section Headings. Article and Section headings in this Development Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants, or conditions of this Development Agreement.

10.7 Entire Agreement. This Development Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Development Agreement consists of [____] pages, including the Recitals, and four (4) exhibits attached hereto and incorporated by reference herein, which constitute the entire understanding and agreement of the parties. The exhibits are as follows:

- Exhibit A Legal Description of the Property
- Exhibit B Diagram of the Property
- Exhibit C Copy Resolution No. [____], Conditions of Approval and Mitigation Measures
- Exhibit D Maude Bicycle Improvements

10.8 Estoppel Certificate. Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party: (a) this Development Agreement is in full

force and effect and a binding obligation of the parties; (b) this Development Agreement has not been amended or modified 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 Development Agreement, or if in default, to describe therein the nature and amount of any such defaults; and (d) any other matter reasonably requested by the requesting party. The party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it is not obligated to do so within twenty (20) business days following the receipt thereof. Either the City Manager or the Community Development Director of the City shall have the right to execute any certificate requested by Owner hereunder. The City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

10.9 Statement of Intention. Because the California Supreme Court held in *Pardee Construction Co, v. City of Camarillo*, 37 Cal.3d 465 (1984) that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development and controlling the parties' agreement it is the intent of the City and Owner to hereby acknowledge and provide for the right of Owner to develop the Project in such order and at such rate and times as Owner deems appropriate within the exercise of its sole and subjective business judgment. The City acknowledges that such a right is consistent with the intent, purpose, and understanding of the parties to this Development Agreement, and that without such a right, Owner's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Legislation and this Development Agreement.

10.10 Consistency with City Ordinance. The City warrants that each and every provision of this Development Agreement is consistent with, and not in conflict with, the City's Development Agreement Ordinance.

10.11 Indemnification. Owner agrees to defend, indemnify, release, and hold harmless the City, its City Councilmembers, agents, officers, attorneys, employees, boards, and commissions from any litigation, claim, action, or court proceedings brought against any of the foregoing individuals or entities ("Indemnified Parties"), the purpose of which is to attack, set aside, void, or annul the Approvals or this Development Agreement. This indemnification shall include, but not be limited to, damages, costs, expenses, reasonable attorney fees, or expert witness fees that may be asserted or incurred by Indemnified Parties, arising out of or in connection with the approval of this Development Agreement or any Approvals. If Owner is required to defend Indemnified Parties in connection with any litigation, claim, action, or court proceeding, the City shall retain the right to approve counsel selected by Owner for that purpose and any and all settlements proposed by Owner, which approvals shall not be unreasonably withheld by the City. Owner shall also have the right to approve any and

all settlements of such matters proposed by the City and relating to this Development Agreement or the Approvals, which approval shall not be unreasonably withheld by Owner. The City agrees to cooperate with Owner in the defense of the claim, action, or proceeding. Nothing in this section shall be construed to mean that Owner shall defend, indemnify, or hold the City or its elected or appointed representatives, officers, agents, and employees harmless from any claims of personal injury, death or property damage arising from, or alleged to arise from, the maintenance or repair by the City of improvements that have been offered for dedication and accepted by the City or for the City's gross negligence or willful misconduct.

10.12 **Execution.** This Development Agreement was approved by the City Council of the City by way of Ordinance No. [____], which was finally adopted on [____], 2018 and became effective thirty (30) days thereafter, and was duly executed by the parties as of [____], 2018.

10.13 **Recordation.** Within twenty (20) days after the Effective Date of this Development Agreement, the City Clerk shall have a memorandum of this Development Agreement, in a form acceptable to the City Attorney, recorded in the Official Records of Santa Clara County, California. If the parties to this Development Agreement or their successors in interest amend or cancel this Development Agreement as hereinabove provided, or if the City terminates or modifies this Development Agreement as hereinabove provided, the City Clerk shall have notice of such action recorded in the Official Records of Santa Clara County, California.

10.14 **No Waiver of Police Powers or Rights.** In no event shall this Development Agreement be construed to limit in any way City's rights, powers, or authority under the police power and other powers of the City to regulate or take any action in the interest of the health, safety, and welfare of its citizens.

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IN WITNESS WHEREOF, City and Owner have executed this Development Agreement as of the date first written above.

“City”:
CITY OF MOUNTAIN VIEW,
a California charter city and municipal
corporation

“Owner”:
LINKEDIN CORPORATION,
a Delaware corporation

By: _____
City Manager

By: _____

Print Name: _____

By: _____
City Clerk

Title: _____

APPROVED AS TO CONTENT:

Taxpayer I.D. Number

Community Development Director

FINANCIAL APPROVAL:

Finance and Administrative
Services Director

APPROVED AS TO FORM:

City Attorney