Attachment 1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW
APPROVING A DEVELOPMENT AGREEMENT FOR THE MIDDLEFIELD PARK MASTER PLAN PROJECT GENERALLY LOCATED AT THE NORTHEAST CORNER OF ELLIS STREET AND EAST MIDDLEFIELD ROAD AND NORTH OF WEST MAUDE AVENUE, BETWEEN LOGUE AVENUE AND CLYDE AVENUE, MOUNTAIN VIEW, CALIFORNIA

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 ("Agreement") (PL-2021-249).

2. Google LLC, a Delaware limited liability company ("Applicant" or "Owner"), has a legal interest in certain real property located in the City consisting of approximately 40 acres, generally located at the northeast corner of Ellis Street and East Middlefield Road and north of West Maude Avenue, between Logue Avenue and Clyde Avenue, and commonly known as Middlefield Park Master Plan (collectively, the "Property"). 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. 17711, and the area subject to the East Whisman Precise Plan (the "Precise Plan") adopted November 5, 2019, by Resolution No. 18397.

3. Applicant desires to redevelop the Property to create a development envisioned by the Middlefield Park Master Plan by demolishing existing buildings, landscaping, and improvements and reconfigure existing parcels to create new parcels for a mixed-use development of up to 1,520 market-rate residential units, 1.317 million square feet of office and research and development (R&D) buildings, 50,000 square feet of retail commercial space (including active uses, neighborhood commercial and community/civic spaces), land dedication of 2.4 acres to accommodate affordable residential development, district parking facilities, 6.97 acres of dedicated public parks and 2.87 acres of privately owned, publicly accessible (POPA) open space, new pedestrian and bicycle improvements, and an optional private district utility system (the "Project").

4. The City is desirous of encouraging quality economic growth and expanding its employment base within the City, in parallel with residential development and new public parks, to ensure a jobs/housing balance, thereby advancing sustainable growth in the interests of the City's residents, taken as a whole. The City has determined the Project complies with the plans and policies set forth in the General Plan and Precise Plan.

5. A primary purpose of this Agreement is to assure the Project can proceed without disruption caused by a change in City's planning policies and requirements following the Project at time of approval and to ensure the required community benefits, public benefits, and required exactions the applicant is committing to provide in connection with development of the Project are timely delivered. The applicant also desires the flexibility, subject to phasing requirements of the development, to develop the Project in response to market conditions.

6. By entering into this Agreement, the City is receiving assurances of orderly growth and quality development in the Precise Plan area, in accordance with the goals and policies set forth in the General Plan and Precise Plan, and timely delivery of required improvements, community benefits, and public benefits. The City also recognizes that this Agreement will facilitate the transformation of a 40-acre suburban office park into a denser, mixed-use neighborhood with approximately 10 acres of public open space and up to 1,900 residential units and that implementation of a project of this scope and scale requires phased construction, extensive resources, and a long-term commitment by the Applicant.

7. 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 Sections 36.54.15(a)(1)-(7) and 36.54.15(d) contain the required findings for adoption of the Development Agreement, and all findings are made as follows in Paragraphs 8 through 15 below.

8. The Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the General Plan for the High-Intensity Office and East Whisman Mixed-Use Land Use Designations, which envision a harmonious balance of housing near jobs, public transit, neighborhood-serving businesses, and parks. The Development Agreement is also consistent with the East Whisman Precise Plan and the three Character Subareas for which the Project (which includes Planning Application Nos. PL-2020-149 and PL-2021-121) spans for development that provides innovative site, architectural, landscape designs, and transportation demand management measures supporting the City's goals for reducing trips and encouraging transit-oriented development, including: (a) the low-intensity subarea within the "Employment Character Area (North)," which allows bonus intensity of up to 0.5 floor area ratio (FAR) for nonresidential development with highly sustainable design; (b) medium-intensity subarea within the "Mixed Use Character Area," which allows bonus intensities up to 0.75 FAR for nonresidential development and 2.5 FAR for residential/mixed-use

developments with highly sustainable design; and (c) high-intensity subarea within the "Mixed-Use Character Area," which allows bonus intensity of 1.0 FAR for nonresidential development and 3.5 FAR for residential/mixed-use development with highly sustainable design.

9. 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 Project complies with the allowable land uses in the Precise Plan at the building heights and intensities permitted; meets the requirements of the Neighborhood Park Master Plan area to ensure a large, dedicated public park and surrounding land uses are appropriately planned for and provided, along with meeting other requirements for a master plan per the Precise Plan; and provides compatibility with surrounding uses and developments consistent with the Precise Plan and the Moffett Field Comprehensive Land Use Plan (CLUP) for the nearby airport.

10. The Development Agreement is in conformity with the public convenience, general welfare, and good land use practice because the design of the Master Plan building and open-space locations, proposed mix of land uses, and multi-modal transportation improvements are compatible with the Precise Plan development standards and allowable land uses. Additionally, the Project encourages and supports the use of public transit due to the immediate adjacency of the Middlefield Light Rail station and proximity (a short light rail ride) to the Mountain View Transit Center in downtown with access to a larger network of regional public transit services, along with Middlefield Park Master Plan's planned improvements to the adjacent Valley Transportation Authority (VTA) bus stop on Middlefield Road.

11. The Development Agreement will not be detrimental to the health, safety, and general welfare of the community because the proposed Project is consistent with the provisions of the General Plan and Precise Plan and will conform to City, State, and Federal codes and regulations for design, construction, and operations of the planned development.

12. 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 mixed-use and office buildings, parks and open spaces, and transportation improvements align with the vision and development standards of the Precise Plan and are compatible with the surrounding office and residential developments nearby.

13. 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 and requires significant resources and extensive coordination of improvements from the applicant to construct.

14. The Development Agreement is advantageous to and benefits the City because the Applicant will provide over $11 million in public benefits as part of the Development Agreement and numerous other community benefits and fees, along with a large amount of land dedication to the City for public parks and affordable housing developments that exceed the

requirements of the Precise Plan or City regulations. The Development Agreement will allow sufficient time and assurance for the implementation of a large project that is anticipated to transform the area to realize the vision of the East Whisman Precise Plan for a denser mixed-use development with substantial new residential uses, in addition to office and other commercial uses and more expansive and enhanced public open spaces.

15. The Development Agreement complies with the California Environmental Quality Act (CEQA). A Supplemental Environmental Impact Report ("SEIR") has been prepared for the Project, which tiers from the East Whisman Area Precise Plan Program Environmental Impact Report (SCH No. 20177082051) ("Precise Plan EIR") and the Mountain View 2030 General Plan and Greenhouse Gas Reduction EIR (SCH No. 2011012069) ("General Plan EIR"), and a statement of overriding consideration has been prepared due to significant unavoidable air quality impacts; all other environmental considerations were either consistent with the Precise Plan EIR or General Plan EIR impacts or mitigated to less than significant with the incorporation of mitigation measures and standard City conditions of approval. The SEIR further confirms that: (a) the proposed Project does not constitute a substantial change that would require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; (b) there have been no substantial changes with respect to the circumstances under which the Project will be constructed that would require major revisions to the Precise Plan EIR or General Plan EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and (c) there has been no new information of substantial importance that was not known, and could not have been known, with the exercise of reasonable diligence at the time that the Precise Plan EIR and General Plan EIR was certified.

16. The Development Agreement for the Middlefield Park Master Plan has been reviewed by the City Attorney.

17. 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, including meeting the required contents of a development agreement as set forth in Section 36.54.20.

18. In exchange for significant public benefits of the Project and the infrastructure and transportation 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 the 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 twenty (20) years, with allowable extension, from the Effective Date as defined in the Development Agreement. In order to effectuate these purposes, the parties desire to enter into the Development Agreement.

19. On October 26, 2020, after conducting a duly noticed public hearing pursuant to Article XVI, Division 16 of the City Code, the Zoning Administrator recommended that the terms of the proposed 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 GOOGLE LLC, FOR THE MIDDLEFIELD PARK MASTER PLAN PROJECT" hereafter is consistent with the City's General Plan, the East Whisman Precise Plan, and the City's Zoning Ordinance and provides substantial public benefits to persons residing or owning property outside the boundary of the Property, which exceed the exactions for public benefits required in the normal development review process under Federal, State, or local law. The City 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 or designee to execute the Development Agreement in substantially the form attached hereto as Exhibit A, subject to minor technical conforming changes as may be approved by the City Attorney.

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. Upon this effectiveness of this Ordinance, the City Clerk or designee is hereby directed to file a Notice of Determination with the County Clerk of the County of Santa Clara, pursuant to the provisions of Section 21152 of CEQA and Section 15094 of the State CEQA Guidelines.

Section 8. 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.

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Exhibit: A. Development Agreement

Recording Requested by and When Recorded Return to:

City Clerk
City of Mountain View
P.O. Box 7540
Mountain View, CA 94039-7540

Exempt from Recording Fees per Govt. Code §§ 6103 and 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Assessor's Parcel Nos:
160-58-001, 160-58-016, 160-58-017, 160-57-004, 160-57-006, 160-57-007, 160-57-008, 160-57-009, 160-57-010, 160-57-011, 160-57-012, 160-57-013, 160-59-005, 160-59-006.

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF MOUNTAIN VIEW

AND

GOOGLE LLC, A DELAWARE LIMITED LIABILITY COMPANY

FOR THE MIDDLEFIELD PARK MASTER PLAN PROJECT

Effective Date: January 12, 2023

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DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT ("**Agreement**") dated for reference purposes only as of December 13, 2022, is made and entered into 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 ("**City**"), and GOOGLE LLC, a Delaware limited liability company ("**Developer**"), pursuant to Government Code Sections 65864 *et seq*. Developer and City are referred to individually in this Agreement as a "**Party**" and collectively as the "**Parties**."

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 Statute**"), which authorizes City and any person holding a legal or equitable interest in real property to enter into a development agreement, establishing certain development rights in the property.

B. Pursuant to Government Code Section 65865, City has adopted procedures and requirements for consideration of development agreements in Sections 36.54 to 36.54.40 ("**Development Agreement Ordinance**") of the City Code. This Agreement has been processed, considered, and executed in accordance with such procedures and requirements.

C. Developer has a legal interest in that certain approximately 40 acre real property located in the City of Mountain View adjacent to VTA's Middlefield Station bounded by Ellis Street, East Middlefield Road, Logue Avenue, Maude Avenue, Clyde Avenue, and the city limit as more particularly described in the attached **Exhibit A**, and as shown on the map attached as **Exhibit B** (collectively, the "**Property**").

D. Developer desires to redevelop the Property to create the development envisioned by the Middlefield Park Master Plan, by demolishing existing buildings, removing heritage and non-heritage trees, landscaping and improvements, and reconfiguring existing parcels to create new parcels for a new mixed-use development of up to 1,520 market rate residential units, 1.317 million square feet of office and research and development (R&D) buildings, 50,000 square feet of retail commercial space (including active uses, community spaces, and civic uses), land dedication of 2.4 acres to accommodate affordable residential units, district parking facilities, 6.97 acres of dedicated public parks and 2.87 acres of POPA Open Space, pedestrian and bicycle improvements, and an optional private district utility system as further described in this Agreement, including in the Project Summary attached hereto as **Exhibit C** and in the Existing Approvals (collectively, the "**Project**").

E. The Property is located within the East Whisman Change Area under the City's 2030 General Plan ("**General Plan**"), which was adopted by the City Council on July 10, 2012 by Resolution No. 17711, and the Property is subject to the East Whisman Precise Plan ("**Precise Plan**") adopted by the City Council on November 5, 2019 by Resolution No. 18397. The General Plan Land Use map designates portions of the Property as "East Whisman Mixed Use" and portions as "High Intensity Office". The Precise Plan designates the Property primarily "Mixed-

Use Character Area" (with a combination of "High Intensity Subarea" and "Medium Intensity Subarea") with a smaller portion as "Employment Character Area (North) – Low Intensity Subarea." The Property is zoned P-41 (East Whisman) Precise Plan.

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

1. Environmental Review. The potential environmental impacts of the Project have properly been reviewed and evaluated by City pursuant to the California Environmental Quality Act ("**CEQA**"), Public Resources Code Sections 21000 *et seq*. Pursuant to CEQA, City prepared and duly processed a Supplemental Environmental Impact Report ("**Project EIR**") (SCH No. 2021100026) which relied on and tiered from the certified East Whisman Area Precise Plan Program Environmental Impact Report (SCH No. 20177082051) ("**Precise Plan EIR**"). Preparation of the Project EIR included supplemental studies and a Mitigation Monitoring and Reporting Program ("**MMRP**") for implementation of mitigation measures specified in the Project EIR and incorporated from the Precise Plan EIR (the Precise Plan EIR, Project EIR, supplemental studies, Statement of Overriding Considerations, and MMRP are, collectively, the "**Project CEQA Documentation**"). After a duly noticed public hearing and in accordance with the recommendation of the City's Environmental Planning Commission (the "**Planning Commission**"), on November 15, 2022, by Resolution No. 18733, the City Council certified the Project EIR as adequate under CEQA for consideration of approvals required for the Project, including this Agreement and the Existing Approvals, and adopted the MMRP, and adopted a Statement of Overriding Consideration due to significant un-mitigable environmental impacts related to air quality.

2. Master Plan. Following review and recommendation by City's Planning Commission on October 19, 2022, after a duly noticed public hearing and certification of the Project EIR, the City Council on November 15, 2022, by Resolution No. 18734, approved the Middlefield Park Master Plan ("**Master Plan**") and the Middlefield Park Implementation Plan ("**Implementation Plan**"), establishing a development program for the Property consistent with and pursuant to the Precise Plan and City Code regulations, together with Conditions of Approval and administrative procedures for the same.

3. Vesting Tentative Map. Following review and recommendation by City's Planning Commission (acting as the Subdivision Committee) on October 19, 2022, after a duly noticed public hearing, the City Council on November 15, 2022, by Resolution No. 18735, approved a Vesting Tentative Map together with Conditions of Approval ("**Subdivision Conditions**") pursuant to City Code Chapter 28, for subdivision of the Property to implement the Project ("**Vesting Tentative Map**").

4. Vacation of a Public Street on a Portion of Logue Avenue. Following adoption of a notice of intent to vacate on October 25, 2022, and a duly noticed public hearing and certification of the Project EIR, the City Council on November 15, 2022, by Resolution No. 18736, approved the conditional vacation of a public street on a portion of Logue Avenue to permit the reconstruction of a portion of Logue Avenue with a new public street easement to be dedicated to the City pursuant to the Public Streets, Highways, and Service Easement Vacation Law, California Streets and Highways Code Sections 8330, *et seq.* ("**Vacation**").

5. Park Land Dedication Credit for Middlefield Park Master Plan. Following a duly noticed public hearing, the City Council on November 15, 2022, by Resolution No. 18738, approved granting a park land dedication credit for a portion of the park land dedication requirement of the Middlefield Park Master Plan for a 2.87-acre privately owned publicly accessible (POPA) open space referred to as Ellis POPA Open Space, pursuant to City Code Chapter 41 ("**Park Land Credit**").

The approvals described in this Recital F are referred to, collectively, as the "**Existing Approvals**."

G. City is desirous of encouraging quality economic growth and expanding its employment base within the City, in parallel with residential development and new public parks to ensure a jobs/housing balance, thereby advancing sustainable growth in the interests of its residents, taken as a whole. City has determined the Project complies with the plans and policies set forth in the General Plan and Precise Plan.

H. A primary purpose of this Agreement is to assure the Project can proceed without disruption caused by a change in City's planning policies and requirements following issuance of the Approvals and to ensure the Required Exactions, Community Benefits and Public Benefits Developer is committing to provide in connection with development of the Project are timely delivered. Developer also desires the flexibility, subject to phasing requirements in this Agreement, to develop the Project in response to market conditions and to ensure the Existing Approvals remain valid over the Term of this Agreement.

I. City has determined that by entering into this Agreement City is receiving assurances of orderly growth and quality development in the Precise Plan area in accordance with the goals and policies set forth in the General Plan and Precise Plan, and timely delivery of Required Exactions, Community Benefits and Public Benefits. The City also recognizes that this Agreement will facilitate the transformation of a 40-acre suburban office park into a denser, mixed-use neighborhood with approximately 10 acres of public open space and up to 1,900 residential units, and that implementation of a project of this scope and scale requires phased construction, extensive resources, and a long-term commitment by the Developer.

J. Developer recognizes it is being afforded greater latitude concerning long-term assurances for development of the Project in exchange for agreeing to contribute greater Community Benefits and Public Benefits than otherwise required for the Approvals and does so freely and with full knowledge and consent. City will further benefit from an increase in the likelihood that the Community Benefits and Public Benefits which are presently or will be reflected in the Conditions of Approval will be realized because this Agreement will increase the likelihood that the Project will be completed pursuant to the Approvals.

K. For the reasons stated herein, among others, City and Developer have determined the Project is a development for which a development agreement is appropriate. This Agreement will, in turn, eliminate uncertainty in planning for and securing orderly development of the Property. City has also determined the Project includes Community Benefits and Public Benefits and will provide additional market rate and affordable housing options for the community; strengthen City's economic base with high-quality, long-term jobs, in addition to shorter-term construction jobs; generate revenues for City in the form of one-time and annual fees, taxes, and

other fiscal benefits; promote high-quality design and sustainable development; expand park and open space amenities; enhance the use of public transit and other alternative modes of transportation; and otherwise achieve the goals and purposes for which the Development Agreement Statute was adopted.

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

M. City has given notice of its intention to adopt this Agreement, conducted public hearings thereon pursuant to Government Code Section 65867, and the City Council hereby finds that: (1) the provisions of this Agreement and its purposes are consistent with the General Plan, the Precise Plan, Chapter 36 (Zoning) of the City Code ("**Zoning Ordinance**") and other chapters of the City Code, the Master Plan, and CEQA; (2) the Project and this Agreement are compatible with the uses authorized in, and the regulations prescribed for, the General Plan and Precise Plan in which the Property is located; (3) this Agreement complies in all respects with the Development Agreement Statute and the City's Development Agreement Ordinance; (4) this Agreement will not be detrimental to the health, safety, and general welfare of the community; (5) this Agreement will not adversely affect the orderly development of property or the preservation of property values; (6) this Agreement will facilitate development of the Property in the manner proposed and is needed by Developer due to the timing constraints on 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) Developer has made commitments to a high standard of quality development and delivery of Community Benefits and Public Benefits; (9) this Agreement is in conformity with public convenience, general welfare, and good land use practice; and (10) this Agreement is advantageous to, and benefits, the City.

N. Following review and recommendation by the Zoning Administrator on October 26, 2022, and a duly noticed public hearing, this Agreement was approved by the City Council of City by Ordinance No. _____ ("**Enacting Ordinance**"), which was introduced on November 15, 2022 and finally adopted on a second reading by the City Council on December 13, 2022 and will become effective thirty (30) days thereafter on January 12, 2022.

AGREEMENTS

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

ARTICLE 1
GENERAL PROVISIONS

1.1 **Incorporation of Preamble, Recitals and Exhibits**. The preamble paragraph, Recitals and Exhibits, and all defined terms contained therein, are hereby incorporated into this Agreement as if set forth in full.

1.2 **Property Subject to the Development Agreement.** All of the Property shall be subject to this Agreement. Subject to the provisions of Articles 10 and 11 of this Agreement, Developer agrees that all persons holding legal or equitable title in the Property shall be bound by this Development Agreement.

1.3 **Definitions**. The following defined terms shall apply to this Agreement.

"**Active Uses**" is defined, and shall have the meaning set forth, in Section 1.2 (Terminology) of the Master Plan.

"**Active Use Space**" means all ground floor space in Residential Buildings, the Ellis Community Pavilion, and Parking Structure P2, that is in each case designed or otherwise intended for occupancy by Active Uses, containing up to 50,000 gross square feet ("**GSF**") of space as described in Table 5.3.2 of the Master Plan. For the avoidance of doubt, Active Use Space includes the Required 5,000 Sq. Ft. Space.

"**Active Use Subsidized Space**" means a minimum of 22,000 square feet of Active Use Space that meets the requirements of the Approvals and this Agreement regarding Developer's obligations to provide subsidized space and support occupants of such space in accordance with the Small Business Diversification and Non-Profit Inclusion Program, being collectively, the Active Use Subsidized Space within Phase 1 (R1, R2 and Ellis POPA Open Space) and/or Phase 3 (R3, R4b, and R5). The provisions of this Agreement regarding Active Use Subsidized Space shall apply to such space whether it is located in Phase 1 or Phase 3, unless the terms clearly limit such application to one phase. For the avoidance of doubt, Active Use Subsidized Space excludes (i) the Required 5,000 Sq. Ft. Space, and (ii) the amount of any Active Use Space developed in excess of the Small Business Diversification and Non-Profit Inclusion Program requirements. For the avoidance of doubt, a grocery store may occupy an Active Use Subsidized Space or may be in other Active Use Space.

"**Affiliated Party**" means any corporation, limited liability company, partnership or other entity which is directly or indirectly Controlling of, Controlled by, or under Common Control with Developer or Lendlease, as applicable.

"**Affordable Housing**" is defined in Zoning Ordinance Section 36.40.05, and further described in the Affordable Housing Plan.

"**Affordable Housing Plan**" means the plan setting forth Developer's Affordable Housing obligations for the Project and, more specifically, a BMR Alternative Mitigation pursuant to Chapter 36, Article XIV, Division 2 of the City Code and the City's Below-Market-Rate Housing Guidelines, which plan is included in the Implementation Plan.

"**Affordable Housing Sites**" means Residential Parcel R4a and Residential Parcel R6 as shown on the Vesting Tentative Map to be dedicated by Developer to City, or its assignee or designee, for development of Affordable Housing, as further described in Section 5.1.1 and the Affordable Housing Plan.

"**Agreement**" or "**Development Agreement**" means this Development Agreement between City and Developer, including all Exhibits hereto.

"**Agreement Amendment**" is defined in Section 8.8.2.

"**Applicable City Law**" means (a) the City's Charter, City Code, General Plan, and Precise Plan, as each of the foregoing is in effect on the Effective Date; (b) the other City ordinances, resolutions, orders, rules, policies, standards, specifications, plans, guidelines or other regulations that are applicable to the Property and the Project and in effect on the Effective Date; (c) New City Laws permitted to apply pursuant to Section 3.6; and (d) Construction Codes in effect from time to time pursuant to Section 3.8.

"**Applicable Law**" means (i) the Applicable City Law and (ii) all regional, State and Federal laws and regulations applicable to the Property and the Project as such regional, State and Federal laws and regulations may be enacted, adopted and amended from time to time.

"**Approvals**" means the Existing Approvals and Subsequent Approvals.

"**Assignment and Assumption Agreement**" is defined in Section 10.2 and **Exhibit L**.

"**Base FAR**" means the allowable FAR square footage on a given parcel within the Project, which is established by the Precise Plan at 0.4 FAR for nonresidential development and 1.0 FAR for residential development.

"**BMR Alternative Mitigation**" is defined in Section 5.1.1.

"**Bonus FAR**" means FAR square footage from the Precise Plan's Development Reserve, in excess of the Base FAR, voluntarily pursued by Developer in exchange for incorporating green building standards, community benefit obligations, and participation in the Jobs-Housing Linkage Requirement or provision of affordable housing as described in the Precise Plan for residential and nonresidential development, as further specified in the Approvals.

"**Bridge Concept Funding**" is defined in Section 5.3.3.1.

"**Bridge Feasibility Study**" is defined in Section 5.3.3.1.

"**Bridge Open Space**" means the approximately 1.36-acre future park on the Property to be developed by the City on two parcels of land offered for dedication by Developer for a future pedestrian-bicycle bridge to be designed and constructed by the City, as specified in the Approvals, Vesting Tentative Map (Parcels Park 1 and 2), and this Agreement.

"**Building Codes and Guidelines**" is defined in Section 3.8.1.

"**Building Permit**", when capitalized in this Agreement, means a City-issued building permit for construction (including any permanent elements of the

basement above the lowest level basement slab); permits for demolition or grading shall not constitute a Building Permit.

"**Business Day**" means a day that is not a Saturday, Sunday, federal holiday, state holiday under the laws of the State of California or other posted City office closure.

"**Caltrans**" means the California Department of Transportation and any successor agency.

"**CEQA**" means the California Environmental Quality Act, California Public Resources Code section 21000, *et seq*., as the same may be amended or modified from time to time.

"**Central Utility Plant**" means a centralized facility to operate one or more District Utility Systems anticipated to be located within Office Building O1, as generally described in the Existing Approvals. The Central Utility Plant is an optional design feature in the Project.

"**Certificate of Occupancy**" means a certificate issued by City evidencing construction completion under a City-issued Building Permit following a final inspection of the applicable building, structure or improvements with a City-signed "job card" which allows occupancy of the associated building, structure or improvement. "Certificate of Occupancy" does not include a Temporary Certificate of Occupancy.

"**City**" means the City of Mountain View, a California charter city and municipal corporation, organized and existing under the laws of the State of California.

"**City Affordable Housing Program**" is defined in Section 5.2.3.1.

"**City Code**" means the City of Mountain View City Code (as the same may be amended or modified from time to time, subject to this Agreement's provisions regarding the limitations of the applicability of such changes to the Project, Property and this Agreement).

"**City Construction Specifications**" is defined in Section 3.8.1.

"**City Council**" means the City Council of the City of Mountain View, California.

"**City Density Bonus Law**" is defined in Section 5.2.3.1.

"**City Event**" means an event, that the City organizes and runs, during the specified hours of operation for the Ellis Community Pavilion and Ellis Plaza, but in no event more than fifteen (15) hours in duration (not including reasonable set-up and break-down) in any thirty-six (36) hour period, subject to (i) scheduling coordination with other pre-planned events in the calendar that the manager or operator of Ellis Plaza maintains for events in the Ellis Community Pavilion and Ellis Plaza, (ii) City's ability to produce a self-insurance or joint self-insurance document identifying the

self-insured or joint self-insured status or other proof of insurance with insurance coverage limits for general liability and property damage, automobile liability, and workers compensation/employer liability, and (iii) City's commitment to arrange for, or reimburse Developer its out-of-pocket costs of providing, reasonably necessary services such as clean-up/trash removal and security or crowd control services in connection with such events.

"**City Party**" and "**City Parties**" are defined in Section 12.9.

"**Claims**" is defined in Section 12.9.

"**Commence Construction**", "**Commencement of Construction**" and similar capitalized variations thereof shall mean (i) commencement of construction to erect a structure(s) under a City-issued Building Permit, excluding demolition, and grading activities; (ii) commencement of demolition, grading and site preparation construction activities on the sites to be dedicated to City in accordance with the City's acceptance of land conveyance requirements; and (iii) commencement of demolition, grading, excavation or other site preparation construction activities for infrastructure or utilities on private or public property for the District Utility System.

"**Community Benefits**" is defined in Section 5.2.4.

"**Community Development Department**" means the Community Development Department (CDD) of the City of Mountain View or any successor department or agency.

"**Complete**", "**Completion**" and any capitalized variations thereof means: (i) for the POPA Open Space, the City and any Other Agencies with jurisdiction over such space have issued required approval(s), with construction having been fully completed in accordance with the applicable Approvals and final inspection(s) completed; (ii) for any District Utility System infrastructure, the City and any Other Agencies with jurisdiction over any required permits for the system or infrastructure have issued required approval(s), with construction fully completed, and final inspection(s) completed; and (iii) for any building, the City has issued required approvals, with construction fully completed and a Certificate of Occupancy issued.

"**Compliance Notice**" is defined in Section 7.2.3.

"**Compliance Plan**" means a summary of the Project's strategy, as of the Effective Date, to comply with minimum City requirements for development in accordance with the Precise Plan and Applicable City Law as further described in **Exhibit E**, subject to any changes to such plan pursuant to the terms of this Agreement.

"**Conditions of Approval**" means the Project's Conditions of Approval, including the Subdivision Conditions, as such conditions may be modified from time-to-time

in accordance with terms and limitations of the Existing Approvals, applicable Subsequent Approvals, and this Agreement.

"**Connection Fees**" means those fees charged by City on a City-wide basis or by a utility provider to utility users as a cost for connecting water, sanitary sewer, and other applicable utilities, except for any such fee or portion thereof that constitutes an Impact Fee.

"**Construction Cost Index**" or "**CCI**" means the Engineering News Record (ENR) Construction Cost Index for the San Francisco Urban Area published each year, or if such index is no longer available then a comparable index as reasonably selected by City.

"**Construction Codes**" is defined in Section 3.8.1.

"**Consumer Price Index**" or "**CPI**" means the San Francisco-Oakland-San Jose Consumer Price Index, All Items (1982-84=100) for All Urban Consumers (CPI-U), published by the Bureau of Labor Statistics for the U.S. Department of Labor Consumer Price Index for the San Francisco Bay Area, or if such index is no longer available then a comparable index as reasonably selected by City.

"**Contaminated Site**" means a parcel(s) with existing site contamination within, or in close proximity to, the Middlefield-Ellis-Whisman Superfund Study Area and HP and E/M Lubricant groundwater plume that are subject to review, oversight, and remedial response review or actions by other government agencies, including, but not limited to, the U.S. Environmental Protection Agency (US EPA) and San Francisco Regional Water Quality Control Board (SFRWQCB).

"**Control**", "**Controlling**", "**Controlled**", and "**Common Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the day-to-day management and activities of the specified entity (provided, the possession of so-called major decision consent right shall not, in and of itself, be deemed to constitute Control).

"**Declaration of Restrictions and Covenants on Land**" means a declaration in the form of **Exhibit M** attached hereto, setting forth Developer's and its successors and assigns obligations with respect to ownership, operation and leasing of the air space parcel(s) or condominium unit(s) comprising the Active Use Space, including the Active Use Subsidized Space and the acknowledgement of development restrictions on the Property, as specified in the Approvals.

"**Demolition and Grading Permit**" or "**Demolition Permit**" means and refers to City-issued permits for demolition and/or grading in anticipation of additional construction activities issued under a separate Building Permit.

"**Developer**" means Google LLC, a Delaware limited liability company, and its permitted successors, assigns, and Transferees.

"**Developer Party**" and "**Developer Parties**" are defined in Section 12.9.

"**Development Agreement Ordinance**" is defined in Recital B.

"**Development Agreement Statute**" is defined in Recital A.

"**Development Project**" means a development project as defined by section 65928 of the California Government Code.

"**Development Reserve**" means the 2.0 million square feet of net new office floor area available for nonresidential Bonus FAR allocation per the Precise Plan and approved on a project-by-project basis by the City Council.

"**District Utility System**" is defined in Section 3.10.

"**Economic Recession**" is defined in Section 8.2.1.

"**Effective Date**" is defined in Section 2.1.

"**Ellis Community Pavilion**" is defined in Section 5.3.2.3.

"**Ellis POPA Open Space**" means the approximately 2.87 acres of privately-owned, publicly accessible (POPA) open space and the improvements thereon to be developed, operated, maintained and repaired by Developer and its successors and assigns, at their expense, as provided in the Approvals, this Agreement, and in City's standard form Covenant, Agreement and Deed Restriction, for privately owned, publicly accessible open space, which form shall include the key provisions attached hereto as **Exhibit H**.

"**Ellis Plaza**" is defined in Section 5.3.2.3.

"**Enacting Ordinance**" is defined in Recital N.

"**Exactions**" means exactions that may be imposed by the City under Applicable Law as a condition of or in connection with developing the Project, including requirements for acquisition, dedication or reservation of land or improvements; and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project, whether such exactions constitute subdivision improvements or mitigation measures in connection with environmental review of the Project or, as set forth in Section 3.3.1, as part of Subsequent Approvals, as may be allowed under Applicable Law and this Agreement, and require adjustments to previously approved exactions in response to subsequent MTAs. For purposes of this Agreement, Exactions do not include Impact Fees, Processing Fees or Connection Fees.

"**Existing Approvals**" is defined in Recital F.

"**Existing FAR**" means preexisting nonresidential building square footage on the Property whereby building(s) are planned to be demolished and the preexisting square footage will be reallocated to a new nonresidential building(s) within the Project; this existing square footage does not constitute net new square footage, but is included in Base FAR and listed in Table C2 of **Exhibit C**.

"**Existing Impact Fees**" is defined in Section 4.1.1 and such fees are listed in **Exhibit I**.

"**Existing Uses**" means all lawful uses of existing buildings and improvements, including any legal non-conforming uses as defined in the Zoning Ordinance, on the Property as of the Effective Date.

"**Extension Request**" is defined in Section 2.2.4.

"**Extension Conditions**" is defined in Section 2.2.4.

"**Fee Lock Period**" is defined in Section 4.1.1.

"**Final Approval**" means that (i) all applicable appeal periods for the filing of any administrative or judicial appeal challenging the issuance or effectiveness of any of the Existing Approvals, including the Project EIR, or this Agreement shall have expired and no such appeal shall have been filed, or if such an administrative or judicial appeal is filed, the Existing Approvals, including the Project EIR, or this Agreement, as applicable, shall have been upheld by a final decision in each such appeal without adverse effect on the applicable Existing Approval, including the Project EIR, or this Agreement and the entry of a final judgment, order or ruling upholding the applicable Existing Approval, including the Project EIR, or this Agreement; and (ii) if a referendum petition relating to any Existing Approval or this Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measure are certified by the City in the manner provided by Applicable City Law reflecting the approval by voters of the referenced Existing Approval or this Agreement.

"**First People Centric Fund Payment**" is defined in Section 5.2.4.1.

"**Force Majeure Delay**" is defined in Section 8.2.1.

"**Force Majeure Event**" is defined in Section 8.2.1.

"**Gateway Park**" means the approximately 0.50-acre future park on the Property to be developed by City on land offered for dedication by Developer (i.e. Vesting Tentative Map Parcel Park 4) as provided in the Approvals and this Agreement.

"**GDP**" means the U.S. Gross Domestic Product as determined by the United States Department of Commerce, Bureau of Economic Analysis.

"**General Plan**" is defined in Recital E.

"**Good Faith Efforts**" and any variation thereof shall mean the efforts that a reasonable person would determine is a diligent and honest effort under the same or similar set of facts or circumstances.

"**Hazardous Materials**" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States of America, including any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum, petroleum products, components and by-products; (vi) asbestos and asbestos-containing materials; (vii) polychlorinated biphenyls; (viii) per- and polyfluoroalkyl substances ("PFAS"); (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1317); (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* (42 U.S.C. § 6903); or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*, as the foregoing statutes and regulations now exist or may hereafter be amended.

"**Impact Fees**" means the monetary amount charged by City in connection with a Development Project pursuant to the Mitigation Fee Act (Government Code section 66000 *et seq.*) for the purpose of defraying all or a portion of the cost of mitigating the impacts of the Development Project or development of the public facilities related to the Development Project. Impact Fees do not include Other Agency Fees, Processing Fees, Connection Fees, Community Benefits or Public Benefits.

"**Implementation Plan**" is defined in Recital F and includes all exhibits, addenda, or other attachments to the Implementation Plan.

"**Initial Term**" is defined in Section 2.2.1.

"**Jobs/Housing Linkage Requirement**" is defined in Section 5.2.1.

"**Lendlease**" shall mean Lendlease Americas Holdings Inc., a Delaware corporation or its successors or assigns.

"**Lendlease Affiliate**" shall mean any Affiliated Party of Lendlease Americas Holdings Inc., a Delaware corporation, including, without limitation, Lendlease Corporation Limited, a New South Wales corporation.

"**Litigation Challenge**" is defined in Section 12.10.1.

"**Market-Rate Housing**" means all of the residential development in the Project other than the Affordable Housing.

"**Master Plan**" is defined in Recital F and includes all exhibits, addenda, or other attachments to the Master Plan.

"**Master Encroachment Agreement for District Utility System Terms**" means the agreed upon key terms identified in **Exhibit N** to be included in a Master Encroachment Agreement as described in Section 3.3.5 to be entered into between the Parties if Developer pursues the District Utilities System in permit applications for Subsequent Approvals.

"**Material Change**" shall mean any modification to this Agreement that would materially alter the rights, benefits, or obligations of City or Developer under this Agreement by: (a) extending or reducing the Term of this Agreement, except as expressly authorized herein; (b) materially changing the range of Permitted Uses of the Property, except as provided in this Agreement or in the Existing Approvals; (c) changing the general location of on-site or off-site improvements identified in the Existing Approvals; (d) increasing the maximum height or size of particular building(s) beyond that permitted by the applicable Approval(s); (e) increasing the overall square footage of the Project; (f) decreasing the height or size of a proposed building(s) below the maximum permitted height or size specified in the Existing Approvals, except to the extent Developer is seeking such decrease(s); (g) materially changing the location or size of land dedication offerings contemplated by the Existing Approvals, except as provided in this Agreement or the Existing Approvals; or (h) reducing the monetary or other Required Exaction, Community Benefit or Public Benefit contributions by Developer set forth in this Agreement.

"**Maude Park**" means the approximately 5.11-acre (but not less than 5.0 acre) future park on the Property to be developed by City on land offered for dedication by Developer identified as Parcel Park 3 on the Vesting Tentative Map, as provided in the Approvals and this Agreement.

"**Maude Park Developer Funding**" is defined in Section 5.3.2.1.

"**MMRP**" means the Mitigation Monitoring and Reporting Program defined in Recital F.

"**Mortgage**" is defined in Section 11.1.

"**Mortgagee**" is defined in Section 11.1.

"**MTA**" means the Multimodal Transportation Analysis prepared with the Project EIR, as well as one or more subsequent MTAs prepared as described in Section 3.3.4.

"**Neighborhood Commercial Use**" is defined in Section 3.2 and listed in Table 5 (Allowable Land Use Table) of the Precise Plan.

"**New City Laws**" means any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through their power of initiative or otherwise) after the Effective Date, as addressed further in Section 3.6.1.

"**Nonresidential Bonus FAR**" means Bonus FAR used for nonresidential development as described in section 6.1.3 of the Precise Plan.

"**Notice of Breach**" is defined in Section 7.2.1.

"**Notice of Completion**" means the Form of Notice of Completion and Termination attached to this Agreement as **Exhibit P**.

"**Official Records**" means the Official Records of Santa Clara County, California.

"**Office**" means those uses defined in Section 36.60.33 of the Zoning Ordinance as "Offices," "Offices, administrative and executive," and "Offices, research and development," as may be further specified in the Approvals.

"**Office Building**" means a structure(s) with or without parking built for Office use on an Office Parcel.

"**Office Parcel**" means one of the parcels as shown on the Vesting Tentative Map and the Phasing Plan as designated primarily for Office use.

"**Open Space Deficit**" is defined in Section 5.1.2.6.

"**Operating Memorandum**" is defined in Section 8.8.1.1.

"Other Agency" or **"Other Agencies"** means any governmental or oversight agency, other than City, having jurisdiction over the Project or a portion thereof.

"**Other Agency Fees**" means fees and charges imposed by Other Agencies which in some cases are collected by City on behalf of such agencies.

*"***Other Agency Approvals**" means approvals, entitlements and permits required for development or use of the Project to be obtained from Other Agencies.

"**Parking Structure(s)**" means parking structures P1 and P2 as further described in the Approvals.

"**Park Land Credit**" is defined in Recital F.

"**Parkland Obligations**" is defined in Section 5.1.2.

"**Parkland Requirement**" is defined in Section 5.1.2.

"**Parks Delivery Plan**" means the plan for sequencing of park land delivery in the Project and the City park design process for Maude Park attached hereto as **Exhibit G**.

"**Participating Group**" is described in the Small Business Diversification and Non-Profit Inclusion Program.

"**Party**" or "**Parties**" means individually and collectively Developer and City.

"**People Centric Funds**" means, collectively, the First People Centric Fund Payment and the Second People Centric Fund Payment, which funds shall be paid by Developer to City and deposited in the City's General Fund for use in City's discretion to benefit the City and its residents, which may include funding of, among other programs: (i) housing opportunities and anti-displacement efforts, (ii) small business support and workforce development, (iii) safe and expanded connections for pedestrians and bicyclists and consolidated infrastructure, and (iv) quality open space for recreation, relaxation, and entertainment.

"**Permitted Uses**" is defined in Section 3.3.1.

"**Phase(s)**" means the four (4) discrete development phases of the Project as described and shown in **Exhibit D**, which may be developed sequentially or concurrently with other portions of the Project, subject to the terms and conditions of the Approvals and this Agreement, including the Phasing Plan.

"**Phase 1 Active Use Subsidized Space**" means a minimum of 14,000 square feet of the required minimum 22,000 sq. ft. of Active Use Subsidized Space, approximately 1,000 sq. ft. of which shall be included in the freestanding Ellis Community Pavilion structure in the POPA Open Space with the remaining minimum 13,000 sq. ft. of such Active Use Subsidized Space in the ground floors of the Phase 1 Residential Buildings R1 and R2. Developer shall prioritize a grocery store in this space as provided in Section 4.1.3.2. The remainder of the minimum 22,000 square feet of Active Use Subsidized Space that is not allocated in Phase 1 must be included in Phase 3 as Active Use Subsidized Space. In addition to the minimum required Phase 1 Active Use Subsidized Space, Developer shall include the Required 5,000 Sq. Ft. Space in the ground floor of Residential Building R1 as provided in the Precise Plan.

"**Phase 3 Active Use Subsidized Space**" means the Active Use Subsidized Space that must be located in Phase 3 Residential Buildings R3, R4b, and R5 as needed to meet the remaining balance of 22,000 square feet of Active Use Subsidized Space after deducting the Phase 1 Active Use Subsidized Space provided by Developer in Phase 1 and still functioning as Active Use Subsidized Space at the time Developer applies for the first Subsequent Approval for Phase 3.

"**Phasing Plan**" means the summary table and diagram setting forth delivery of development phasing of the Project attached hereto as **Exhibit D**.

"**Planning Commission**" means the City of Mountain View Environmental Planning Commission as defined in Recital F.

"**POPA Agreement**" is defined in Section 5.1.2.5.

"**POPA Open Space**" means the privately-owned, publicly-accessible open space within the Project as further described in Section 5.1.2.5.

"**Precise Plan**" is defined in Recital E.

"**Precise Plan EIR**" is defined in Recital F.

"**Prevailing Wage Laws**" is defined in Section 6.1.2.

"**Processing Fees**" means any standard fee (which is not an Impact Fee, Connection Fee or Exaction) applied for processing, licensing, permitting, or inspecting permitted activities citywide as listed in City's adopted Fiscal Year Master Fee Schedule, as addressed further in Section 4.2.

"**Project**" is defined in Recital D.

"**Project CEQA Documentation**" is defined in Recital F.

"**Project EIR**" is defined in Recital F.

"**Project Manager**" means a City staff person responsible to lead the Maude Park design and construction project as designated by the City's Public Works Director.

"**Project Summary**" means the summary of the maximum development proposed by the Project and Existing FAR attached as **Exhibit C**.

"**Project Team**" refers to the Maude Park design team comprised of City staff and hired consultant firm(s), including sub-consultant firms, as referred to in **Exhibit G, Table G2**.

"**Property**" is defined in Recital C and described and depicted in **Exhibit A** and **Exhibit B**.

"**Public Art**" is defined in Section 5.3.4.

"**Public Benefits**" is defined in Section 5.3.

"**Qualified Business**" is described in the Small Business Diversification and Non-Profit Inclusion Program.

"**Required 5,000 Sq. Ft. Space**" means a minimum of 5,000 square feet of Neighborhood Commercial Uses within the Active Use Space in the ground floor of Residential Building R1, consistent with the Precise Plan. The Required 5,000 Sq. Ft. Space is counted as part of the Active Use Space in the Master Plan, but not counted as part of the Active Use Subsidized Space. For the avoidance of doubt, a grocery store may occupy the Required 5,000 Sq. Ft. Space, or may be located in other Active Use Space.

"**Required Exactions**" is defined in Section 5.1.

"**Residential Bonus FAR**" means Bonus FAR used for residential development as defined in section 6.1.5 of the Precise Plan.

"**Residential Building**" means a separate structure containing multi-family residential dwelling units (rental or for sale), which may also contain ground floor Active Use Space and parking that may be developed on a Residential Parcel in accordance with the Approvals.

"**Residential Parcel**" means a parcel as shown on the Vesting Tentative Map designated primarily for residential with mixed-use as permitted under the Approvals.

"**Sales and Use Tax Laws**" is defined in Section 5.3.6.

"**Second People Centric Fund Payment**" is defined in Section 5.3.1.

"**Shared Parking Use Agreement Terms**" means the agreed upon terms identified in **Exhibit K**, setting forth Developer's and its successors and assigns ongoing obligations to provide public parking within the Project to visitors of Maude Park, which shall be included in an agreement between the Parties, as further discussed in Section 5.3.5.

"**Small Business Diversification and Non-Profit Inclusion Program**" means the program discussed in Section 5.2.4.2 as further described in **Exhibit J** setting forth Developer's obligations to develop Active Use Subsidized Space and make such space available to Participating Groups at discounted rents and provide related benefits, including additional funding to support Participating Groups. The Required 5,000 Sq. Ft. Space is excluded from this program.

"**Small Business Funds**" is defined in Section 5.2.4.2.C.

"**Staffing and Processing Agreement**" refers to a separate agreement in a standard City form between City and Developer setting forth Developer's obligations to

provide funding of City staff for review of Subsequent Approvals for the Project for an agreed upon term, which may include agreed upon timelines for City permit reviews of Subsequent Approvals and which may be executed by the Parties at any time during the Term of this Agreement.

"**State Density Bonus Law**" is defined in Section 5.2.3.1.

"**Subdivision Conditions**" is defined in Recital F.

"**Subdivision Map Act**" means the Subdivision Map Act set forth in California Government Code Section 66410 *et seq*., as the same may be amended or modified from time to time.

"**Subsequent Approvals**" is defined in Section 3.3.1.

"**Temporary Certificate of Occupancy**" means a temporary certificate of occupancy or partial occupancy of a building or improvement (TCO) with surety funds covering the cost of remaining construction work as may be issued by the City Chief Building Official following a City-issued Building Permit, when construction has been substantially completed, no life safety hazards remain, and the City Chief Building Official determines Construction Completion can occur within a reasonable timeframe.

"**Term**" is defined in Section 2.2.

"**Term Extension**" is defined in Section 2.2.2.

"**Term Extension Requirements**" is defined in Section 2.2.3.

"**Transfer**" is defined in Section 10.1

"**Transferred Property**" is defined in Section 10.1.

"**Transferee**" is defined in Section 10.1.

"**Vacation**" is defined in Recital F.

"**Vesting Tentative Map**" is defined in Recital F.

"**VTA**" means the Santa Clara Valley Transportation Authority.

"**Zoning Ordinance**" is defined in Recital M.

ARTICLE 2
TERM

2.1 **Effective Date.** The "**Effective Date**" of this Agreement shall be the later of (a) full execution by the Parties determined by the last date of a signatory as shown in the signature blocks or (b) the date that is thirty (30) days after the date the Enacting Ordinance is adopted.

2.2 **Term.** Subject to the following qualifications, the "**Term**" of this Agreement shall commence upon the later of: (a) the Effective Date, and (b) the date on which Final Approval occurs; provided, however, if Final Approval has not occurred by the third anniversary of the Effective Date then the Term shall commence as of such third anniversary date, notwithstanding the fact that Final Approval has not yet occurred. Notwithstanding the foregoing, Developer may elect to have the Term commence despite the fact that Final Approval has not yet occurred (unless the validity of this Agreement has been directly challenged in the appropriate court of law or by a referendum in connection with the granting of the Approvals), by giving written notice to City of such election, in which case the Term shall commence upon the date that is thirty (30) days after the date of such notice. Notwithstanding any other provision hereof to the contrary, (A) if Developer reasonably determines that (i) Final Approval will not occur due to a challenge to this Agreement or any of the Approvals or (ii) any challenge to this Agreement or any of the Approvals is resolved in such manner as to prevent the occurrence of Final Approval, or (B) if by the date that is sixty (60) days prior to the third anniversary of the Effective Date, the Term has not yet commenced, then Developer at any time prior to commencement of the Term may terminate this Agreement effective upon not less than thirty (30) days advance written notice to City. Following such termination, neither Party shall have any further rights or obligations hereunder, except for those obligations which by their terms survive expiration or termination hereof.

2.2.1 **Initial Term.** Subject to potential extension as expressly provided in this Agreement, including for Force Majeure Delays as provided in Section 8.2.2 below, the "**Initial Term**" shall be twelve (12) years.

2.2.2 **Extended Term.** Subject to the terms and conditions in this Section 2.2, Developer shall have the right to extend the Initial Term for eight (8) years ("**Term Extension**") for a full Term of twenty (20) years, subject to potential further extension for Force Majeure Delays as provided in Section 8.2.2. In order to obtain the Term Extension, Developer must be in compliance in all material respects with all of its obligations under this Agreement and the Approvals and shall have satisfied all of the conditions described in Section 2.2.3 below.

2.2.3 **Term Extension Requirements**. In addition to the conditions in Section 2.2.2 above, in order to obtain the Term Extension, Developer shall have fully satisfied all of the following requirements prior to expiration of the Initial Term (collectively, the "**Term Extension Requirements**"):

2.2.3.1 **Affordable Housing Sites**. Prior to issuance of the first Building Permit for a new building in the Project, Developer shall have dedicated to City fee title to Residential Parcels R4a and R6 in the condition required by the City's Below-Market-Rate Housing Program Guidelines, the Existing Approvals and Section 5.4 below, as further described in Section 5.1.1 below.

2.2.3.2 **Phase 1 Development**. Developer shall have substantially completed construction of, as evidenced by receipt of a Temporary Certificate of Occupancy, or shall have Completed as evidenced by receipt of a Certificate of Occupancy: (a) both of the Residential Buildings on Residential Parcels R1 and R2, and (b) a minimum of 14,000 square feet of Phase 1 Active Use Subsidized Space.

2.2.3.3 **People Centric Funds**. Developer shall have paid to City, in full, the First People Centric Fund Payment (per Section 5.2.4.1) and the Second People Centric Fund Payment (per Section 5.3.1).

2.2.3.4 **Small Business Diversification and Non-Profit Inclusion Program**. Developer shall have: (a) satisfied requirements to attract and support Participating Groups (per **Exhibit J**), (b) substantially completed construction of tenant improvements for, as evidenced by Temporary Certificates of Occupancy, or shall have Completed as evidenced by Certificates of Occupancy, 14,000 square feet of Phase 1 Active Use Subsidized Space, and (c) initiated and paid out a minimum of fifty percent (50%) of the Small Business Funds as provided in the Small Business Diversification and Non-Profit Inclusion Program.

2.2.3.5 **Maude Park Monetary Contribution**. Developer shall have paid to the City, in full, the Maude Park Developer Funding per **Exhibit G, Table G2**.

2.2.3.6 **Maintain Minimum Requirements**. Without limiting the general requirement to be in compliance in all material respects with the terms of this Agreement and the Approvals, Developer shall have satisfied the requirements then in effect for: (a) housing production pursuant to the Phasing Plan to meet the Jobs/Housing Linkage Requirement pursuant to the Precise Plan as further described in Section 5.2.1 and the Compliance Plan; (b) delivery of the approved BMR Alternative Mitigation, as further described in the Affordable Housing Plan and Existing Approvals; (c) delivery of parkland dedication and credit pursuant to the Parkland Requirement, as further described in Section 5.1.2, the Compliance Plan and Park Delivery Plan; and (d) payment of all applicable City Processing Fees, Connection Fees, and Impact Fees then due and payable.

2.2.4 **Extension Request**. If Developer desires to seek the Term Extension, Developer must submit a letter addressed to the City Manager requesting such extension at least one hundred eighty (180) days prior to the date that the Initial Term otherwise would expire (the "**Extension Request**"). The Extension Request shall include documentation in a form reasonably acceptable to City demonstrating that the applicable extension conditions described in Sections 2.2.2 and 2.2.3 above ("**Extension Conditions**") have been satisfied, or will be satisfied prior to the date that the Initial Term otherwise would expire.

2.2.5 **Extension Review**. Within forty-five (45) days after receipt of an Extension Request and accompanying documentation, the City Manager shall determine reasonably and in good faith, in a written notice to Developer, whether the Extension Conditions have been satisfied, including whether Developer is in compliance with this Agreement in all material respects. If the City Manager so determines that the Extension Conditions have not been satisfied, then the City Manager shall include in the written notice a detailed explanation of the unsatisfied Extension Conditions and why the City Manager believes such conditions have not been satisfied. Except as otherwise provided in this Section 2.2, the determination whether Developer is in compliance with this Agreement shall be undertaken in a manner consistent with the annual review process described in Section 8.1 below. If the City Manager determines Developer is not in compliance with the Agreement in all material respects through such review process, then the City Manager shall provide written notice of the non-compliance items, and Developer shall have the opportunity to cure such non-compliance within thirty (30) days

following the date of City Manager's non-compliance notice. The City Manager's determination shall be final, unless the City Manager determines, in their discretion, to refer the matter to the City Council for a determination with any such hearing being held as soon as reasonably possible after City Manager makes such determination and in any event no later than thirty (30) days before the date upon which the Initial Term otherwise would expire. The City Council's decision shall be final, subject to Developer's ability to pursue available remedies as provided in Section 7.1 below. If the City Manager concludes in the written notice described hereinabove that the Extension Conditions have been satisfied, then they shall grant the Extension Request and promptly provide written notice to Developer, in a recordable form, that the Agreement has been extended for the Extension Term, and the Term shall be extended accordingly; provided, however, that the City Manager's failure or delay in providing such written notice following the City Manager's conclusion that the Extension Conditions have been satisfied shall not affect the extension of the Term.

2.2.6 **Memorandum of Extension**. Within ten (10) days after the written request of either Party hereto, City and Developer agree to execute, acknowledge and record in the Official Records a memorandum evidencing any approved extension of the Term pursuant to this Section 2.2; provided, however, that the Parties' failure or delay in entering into or recording such memorandum shall not affect the extension of the Term.

2.3 **Life of Approvals**. Pursuant to Government Code section 66452.6(a) and this Agreement, the life of the Existing Approvals, including, without limitation, the Vesting Tentative Map and final maps derived from the Vesting Tentative Map) (collectively referred to as "**Subdivision Document**") relating to the Project shall automatically be extended to and until the later of the following: (1) the expiration of the Term of this Agreement, as it may be earlier terminated or extended pursuant to the terms of this Agreement; or (2) the end of the term or life of any such Existing Approval or Subdivision Document otherwise allowed under Applicable Law. The Parties acknowledge that the Developer has received a Vesting Tentative Map for the Project that vests certain rights under the Subdivision Map Act. If this Agreement is earlier terminated in accordance with its terms as a result of City's default, the Parties agree that any then-remaining vested rights provided by the Vesting Tentative Map pursuant to the Subdivision Map Act shall have no further force or effect; provided, Developer shall be entitled to continue exercising its rights in accordance with the Subdivision Map Act and the Subdivision Conditions for the longer of (i) the then-remaining life of the Vesting Tentative Map or (ii) twenty-four (24) months after such termination. If this Agreement is earlier terminated in accordance with its terms as a result of Developer's default, the Parties agree that any then-remaining vested rights provided by the Vesting Tentative Map pursuant to the Subdivision Map Act shall have no further force or effect; provided, Developer shall be entitled to continue exercising its rights in accordance with the Subdivision Map Act and the Subdivision Conditions after such termination as though it was a non-vesting tentative map rather than a vesting tentative map, subject to the City Code and other City regulations and requirements that may then be in effect and applied by City from time to time as Developer proceeds with development in reliance on the tentative map. The Parties' agreements in the foregoing sentence shall survive the expiration or earlier termination of this Agreement. The life of Subsequent Approvals shall be subject to the terms in Section 3.5.1.4.

ARTICLE 3
DEVELOPMENT OF THE PROPERTY

3.1 **Project Development.** Development of the Project will be governed by the Approvals, this Agreement and Applicable Law. City acknowledges the timing of completion of development of the Project is subject to market forces, and Developer shall have no liability whatsoever if the contemplated development of the Project fails to occur; provided, if Developer Commences Construction of the Project, then with respect to those improvements as to which Developer has Commenced Construction, Developer shall proceed to construct in accordance with the Phasing Plan and to make payments, dedicate and convey real property to City (or its assignee or designee), construct the related, required improvements and deliver and provide the Required Exactions, Community Benefits and Public Benefits and take other actions as and when specified in this Agreement and in the Approvals.

3.2 **Right to Develop.** Developer shall have the vested right to develop the Project in accordance with and subject to: (a) the terms and conditions of this Agreement and the Approvals and any amendments to any of them as shall, from time to time, be approved pursuant to this Agreement; (b) Applicable Law; and (c) the allocation of up to 632,354 square feet of Precise Plan Development Reserve, as specified in the Existing Approvals, to the Project's Office development component until Completion of the Project or the expiration or termination of this Agreement, whichever first occurs. Nothing contained herein shall restrict City's discretion to approve, conditionally approve, or deny amendments or changes to the Existing Approvals proposed by Developer. Except as otherwise expressly provided in this Agreement, no future modifications of the following shall apply to the Project: (a) the General Plan or Precise Plan; (b) the City Code; or (c) applicable laws and standards adopted by the City which purport to: (i) limit the use, subdivision, development density, schedule of development of the Property or the Project; or (ii) impose new dedications, improvements, other Exactions, design features, more stringent trip caps or moratoria upon development, occupancy, or use of the Property or the Project. This Agreement and the Approvals are intended to be consistent with each other; therefore, the Parties shall use Good Faith Efforts to consider and interpret this Agreement and the Approvals as a whole and in a manner which harmonizes any conflicting provisions to the maximum extent feasible; provided, however, if the Parties are not able to reconcile any provisions that directly conflict, then the provisions of this Agreement shall control.

3.3 **Subsequent Approvals.**

3.3.1 **Subsequent Approvals**. Certain subsequent land use approvals, entitlements, and permits other than the Existing Approvals, will be necessary or desirable for implementation of the Project ("**Subsequent Approvals**"). The Subsequent Approvals may include, without limitation, the following: (i) zoning permits, such as planned community permits, development review permits, provisional use permits, change of use permits, heritage tree removal permits, and sign permits; (ii) construction-related permits, such as demolition permits, grading permits, building and fire permits, and certificates of occupancy; and (iii) public works-related approvals and permits, such as phased final maps, encroachment permits, excavation permits, permits related to the District Utility System, and utility and discharge permits; and any amendments to, or repealing of, any of the foregoing. Subsequent Approvals also includes execution of separate agreements that include, but are not limited to, master encroachment

agreements, other encroachment agreements, licensing agreements, access agreements, transportation demand management agreements, shared parking agreements, and indemnity agreements. Developer shall be responsible for obtaining any required Subsequent Approvals.

The City, in granting the Existing Approvals and entering into this Agreement, is limiting its future discretion with respect to Subsequent Approvals to the extent they are consistent with the Approvals, Applicable Law and this Agreement. The City acknowledges that Developer's commitments to deliver the Project, including the Community Benefits and Public Benefits, described in this Agreement is, in part, consideration for the City's agreement to limit its discretion with respect to Subsequent Approvals. The conditions, terms, restrictions, and requirements for such Subsequent Approvals shall be in accordance with Applicable City Law (except as otherwise provided in Sections 3.6 and 3.8) and shall not prevent development of the Property for the uses provided under the Approvals, Applicable Law and this Agreement ("**Permitted Uses**"), or reduce the density or intensity of development, or limit the rate or timing of development set forth in this Agreement, as long as Developer is not in default under this Agreement and such development remains consistent with the Project as described in this Agreement, the Precise Plan standards and guidelines, the Master Plan, the Implementation Plan, and any related permits for construction. For any part of a Subsequent Approval request that has not been previously reviewed or considered by City (such as additional details or plans), City shall exercise its discretion consistent with the Approvals and otherwise in accordance with City's customary practice (but subject to the requirements of this Agreement), and subject to Applicable Law. Accordingly, except as otherwise provided herein, in no event shall City deny, or withhold issuance of a Subsequent Approval based upon items that are in compliance with the Approvals, this Agreement and Applicable City Law. Subject to the requirements of this Agreement, the City shall not impose any new condition for a Subsequent Approval that conflicts with the Approvals, except when such condition is necessary to bring the Subsequent Approval into compliance with Applicable City Laws. Provided Developer has otherwise satisfied the conditions of the applicable Approval to issue a Demolition and Grading Permit, Building Permit or Certificate of Occupancy (including but not limited to payment of any required Impact Fees), City will not withhold or delay issuance to Developer of Demolition and Grading Permits, Building Permits or Certificates of Occupancy due to incomplete City infrastructure projects, or failure of City to have commenced any such projects, even though such project(s) are or may be related to the development that is the subject of the Demolition and Grading Permit, Building Permit or Certificate of Occupancy. Any subsequent discretionary action or discretionary approval initiated by Developer that is not otherwise permitted by or contemplated in the Project as described in this Agreement or in the Approvals or which constitutes a Material Change shall be subject to the rules, regulations, ordinances, and official policies of the City then in effect, and City reserves full and complete discretion with respect to any findings to be made in connection therewith. Without limiting the generality of the foregoing, nothing in this Agreement shall be deemed to limit the City's discretion with respect to: (i) any proposed Subsequent Approval that constitutes a Material Change; (ii) Subsequent Approval, to the extent required by Applicable Law, of subsequent subdivision maps not contemplated by the Approvals; or (iii) City's ability to address any public health, or safety concerns, or to comply with Applicable Law. City shall review, process and approve, conditionally approve or disapprove Subsequent Approvals in accordance with this Agreement, including Section 6.2, and the procedures set forth in the Existing Approvals, including the Precise Plan, the Master Plan, and the review and approvals framework in the Implementation Plan.

3.3.2 **Review of Tree Removals**. Implementation of the Master Plan will require removal of heritage and non-heritage trees on the Property, which have been broadly identified in the Master Plan arborist report; however, this Agreement and Existing Approvals do not grant City approval of any tree removals. Tree removals will be evaluated with each phase of development as part of subsequent zoning permit review in accordance with the Master Plan's Tree Framework in the Implementation Plan, Applicable City Law, the Conditions of Approval, and City's standard procedures. In no event shall City require the preservation of trees where such preservation would prevent Developer from achieving the development program outlined in the Master Plan; however, City may require Developer to use Good Faith Efforts to evaluate and consider feasible modifications to building or site designs in each development phase that retains or relocates heritage and non-heritage trees.

3.3.3 **CEQA Review**. The Parties acknowledge that certain Subsequent Approvals may legally require additional analysis under CEQA. Nothing contained in this Agreement is intended to prevent or limit the City from complying with CEQA. In acting on Subsequent Approvals, City will rely on the Project CEQA Documentation to the fullest extent permissible by CEQA, including CEQA Guidelines Sections 15168(c)(2), 15182, and 15183, as determined by City in the exercise of its independent judgment. In the event additional environmental review is required for a Subsequent Approval, City will limit such additional review to the scope of analysis mandated by CEQA and the subject matter of the Subsequent Approval, and will diligently conduct such additional review at Developer's expense, all as determined by City as the lead agency under CEQA in the exercise of its independent judgment and otherwise in a manner consistent with CEQA and Applicable Law.

3.3.4 **Multimodal Transportation Analysis (MTA).** The Parties acknowledge that certain Subsequent Approvals, based on preparation of detailed site and building design plans, may require preparation of subsequent MTAs that could result in alterations to lots, public easements, or improvements shown on the Vesting Tentative Map and/or minor deviations from the Master Plan or modifications to or new Exactions (but not modified or new Impact Fees during the Fee Lock Period). Any modification as a result of any subsequent MTA, may be implemented without the need to amend the Vesting Tentative Map or approve a separate tentative map, or amend the Master Plan.

3.3.5 **Master Encroachment Agreement for District Utility System**. If Developer pursues a District Utility System, then, as part of the Subsequent Approval for the District Utility System, the Parties will enter into a Master Encroachment Agreement to permit encroachment in the public right of way and on public land for a private District Utility System. The Master Encroachment Agreement shall be on the City's then current form of master encroachment agreement modified to include the terms identified in **Exhibit N**, and otherwise shall be in a form approved by the City Attorney.

3.3.6 **No Historical Value**. City finds and acknowledges that as of the Effective Date of this Agreement no existing structures or buildings present on the Property are of any historical value or significance, regardless of age. So long as this Agreement is in effect, City further agrees not to take actions on its own initiative which may result in City's designation, recognition, or acknowledgement of the local historical significance of any structure or building

present on the Property nor will City petition the State or Federal government to add any such structure or building to a State or Federal historic list.

3.4 **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/or private District Utility Systems and Central Utility Plant, and other terms and conditions of development applicable to the Property shall be those set forth in this Agreement, the Approvals, and any amendments to this Agreement or the Approvals made in accordance with this Agreement, and shall be considered vested for the Term.

3.5 **Development Phasing, Timing and Restrictions**.

3.5.1 **Project Phasing and Timing**.

3.5.1.1 The Parties agree that the Project will be developed in the Phases as described in the Phasing Plan attached as **Exhibit D**. If Developer desires to modify the Phasing Plan, such alteration shall not be deemed a Material Change or in conflict with this Agreement, provided the Phasing Plan, as proposed to be modified, ensures (a) residential development is constructed or facilitated (e.g., by means of Developer's dedication of Residential Parcels R4a and R6) so that the Project remains in compliance with its jobs-housing linkage obligations under this Agreement; (b) all of Parcel Park 3 (Maude Park) will be dedicated to City and delivered in one phase at one time to allow timely park construction by City; and (c) district parking structures will be constructed in a timely manner to meet long-term parking requirements per the Existing Approvals. In addition, in all events construction of utilities, streets and other infrastructure must occur as and when needed to ensure that each Phase as built can function appropriately, as determined by City in its reasonable discretion, if no remaining portion of the Project is developed. The Parties acknowledge and agree that during the Project, Developer shall have the right, in its sole and absolute discretion, to determine the allocation of Existing FAR and Nonresidential Bonus FAR based on the remaining balance of each, including allocation of a combination of the two, on any nonresidential development site within the Property, provided that any such allocation otherwise complies with the obligations associated with the square footage being allocated, including, without limitation, payment of applicable Impact Fees, compliance with Jobs-Housing Linkage Program requirements, and satisfaction of any Community Benefits that correspond to such square footage.

3.5.1.2 As described in the Jobs-Housing Linkage Program Guidelines and Precise Plan, no Certificate of Occupancy for any nonresidential development constructed in accordance with the Jobs-Housing Linkage Program shall be issued until (i) the associated residential buildings that Developer or its Transferee is constructing have been Completed and Certificate(s) of Occupancy for the number of residential units required by the Program have been issued (see **Exhibit E, Table E1**) and (ii) Developer has fulfilled the requirements with respect to the condition of the Affordable Housing Sites at dedication and has offered such sites for dedication to City in accordance with this Agreement and the Approvals in order to facilitate development of Affordable Housing in accordance with the Affordable Housing Plan, the Existing Approvals and this Agreement.

3.5.1.3 Subject to the foregoing limitations and the terms and conditions in this Agreement, the Parties acknowledge that (i) Developer shall have no obligation to develop or construct the Project or any component of the Project and (ii) Developer cannot guarantee the exact timing or sequence in which Phases will be constructed and whether certain development will be constructed at all. Such decisions depend upon numerous factors which are not all within the control of Developer. It is the intent of City and Developer that, notwithstanding any future amendment to the Applicable City Law or the adoption of any ordinance, resolution, order, policy, plan, rule, procedure, standards, specifications, guidelines or other regulations (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), Developer, subject to the terms of this Agreement, including the Phasing Plan requirements, may develop the Project at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment. Prior to Commencing Construction of each Phase, Developer shall submit to the City applications for all applicable permits and licenses, including zoning, building and fire permits, offsite plans, a phased final map and business licenses, in accordance with the procedures and requirements set forth in the City Code and the Precise Plan.

3.5.1.4 Subsequent Approval zoning permits consistent with the Existing Approvals are required to be approved for each phase of development. Certain zoning permits require approval at a duly noticed Administrative Zoning public hearing, while others may be approved administratively by City staff. All required zoning permits must be in effect prior to submitting for building and fire permits. While this Agreement extends the life of the Existing Approvals for the Term of this Agreement as provided in Section 2.3, in order to maintain consistent review procedures and demonstrate development progress, each Subsequent Approval shall be valid for the term specified in the Applicable City Law and be eligible for extension as may be allowed by the Applicable City Law; provided, however, per the Existing Approvals, each zoning permit for new construction shall have a term of four (4) years with no permit extension and provided further that, during the term of each such Subsequent Approval, Developer shall be entitled to apply for, process and obtain Building Permits and any other City permits and introduce uses in reliance on that Subsequent Approval during the valid entitlement period of that Subsequent Approval even after termination of this Agreement, provided such termination shall not have occurred as a result of Developer's breach of this Agreement. Should a Subsequent Approval expire, and if Developer still wishes to pursue development pursuant to the Subsequent Approval, Developer shall reapply, pay new Processing Fees, and be subject to the approval process specified in the Existing Approvals, and to the extent not addressed in the Existing Approvals, Applicable City Law.

3.5.1.5 Because the Project will be built out over a number of years, the amount and timing of Required Exactions, Community Benefits and Public Benefits are allocated by Phase. The scope and timing of infrastructure that is associated with specific parcels or buildings, will be consistent with the Approvals and this Agreement. Developer shall meet its obligations to pay Impact Fees and provide the Required Exactions, Community Benefits and Public Benefits described in Approvals and this Agreement as and when required by the terms of this Agreement and the Approvals.

3.5.1.6 Developer shall obtain a phased final map and enter into one or more public improvement agreements in the City's standard form and as approved by the City Attorney before Commencing Construction of any building, infrastructure, or site preparation for land to be dedicated to City. The time limits for completion of off-site improvements as specified in City's improvement agreement or conditions of the Approvals shall govern, unless other time limits are specified in this Agreement in which case this Agreement shall control. Developer is not required to obtain one final map for the entire Property, but can obtain multiple final maps, one for each Phase or building parcel, as desired.

3.6 **Applicable City Law Governs**. Development of the Property shall be subject to all Applicable Law, except as otherwise provided herein. If and to the extent any New City Law, including any change in the City's Charter, ordinances, resolutions, orders, rules, official policies, standards, specifications, plans, guidelines or other regulations (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) is in conflict with the Approvals, Applicable City Law, or the provisions of this Agreement, then the Approvals, Applicable City Law, and the provisions of this Agreement shall prevail, except as otherwise specified herein. For the purposes of this Section 3.6, any New City Law shall be deemed to conflict if it purports to: (a) limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any material reduction in the square footage of a building or any reduction in the number of proposed buildings or relocate, change or reduce other Project improvements from that permitted under this Agreement, Applicable City Law, or the Approvals; (b) limit or reduce the height or bulk of the Project, or any part thereof, or otherwise require any reduction in the height or bulk of individual proposed buildings or other improvements that are part of the Project from that permitted under this Agreement, Applicable City Law, or the Approvals; (c) reduce or relocate the allowed location of vehicular access or parking from that described in the Approvals; (d) prohibit any Project land uses from that permitted under this Agreement, Applicable City Law, or the Approvals; (e) limit or control the rate, timing, phasing, or sequencing of the approval, development, or construction of all or any part of the Project in any manner, including the demolition of existing buildings on the Property, except as otherwise provided in this Agreement, Applicable City Law or the Approvals; (f) limit the location of building sites, grading or other improvements on the Property in a manner that is inconsistent with the Existing Approvals; (g) limit or control the ability to obtain public utilities, services, infrastructure, or facilities (provided, however, in no event shall the Project be subject to any hookup bans or similar moratoria) or be construed as a reservation of any existing sanitary sewer or potable water capacity); (h) impose requirements for reservation or dedication of land for public purposes or requirements for infrastructure, public improvements, or public utilities, other than as provided in or contemplated by the Approvals or this Agreement; (i) during the Fee Lock Period, increase any Existing Impact Fees by amounts in excess of the existing escalation provisions or impose any new Impact Fees beyond those listed in **Exhibit I**; (j) require the issuance of permits or approvals by the City other than those required under Applicable City Law, except as may be allowed under Section 3.6.1 below; or (k) require or necessitate the re-design of the Project during building permit review following approval of a subsequent zoning permit unless required by Applicable Law or as may be allowed under Section 3.6.1. Nothing in this Agreement shall prohibit Developer from challenging the New City Law, and, to the extent such challenge is successful,

this Agreement shall remain unmodified and in full force and effect and neither the Project nor the Property shall be subject to such New City Law.

3.6.1 **Potential New City Laws**. Notwithstanding anything to the contrary in this Agreement, the following "**New City Laws**" shall apply to development of the Property:

3.6.1.1 New City Laws that relate to hearing bodies (except for any New City Laws that create new hearing bodies), petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure imposed at any time, provided such New City Laws are uniformly applied on a City-wide or Precise Plan area basis to all substantially similar types of Development Projects and properties, and such procedures are not inconsistent with procedures set forth in the Approvals or this Agreement and do not alter the final decision-making body for Subsequent Approvals in place as of Effective Date;

3.6.1.2 Other New City Laws that are determined by City to be reasonably required in order to protect occupants of the Project, and/or residents of City, from a condition dangerous to their health or safety, or both, as further described in Section 8.4;

3.6.1.3 Other New City Laws that do not conflict (as defined in Section 3.6 above) with the Applicable City Law, this Agreement or the Approvals, provided such New City Laws are uniformly applied on a Citywide or Precise Plan area basis to all substantially similar types of Development Projects and properties. Developer acknowledges that, as of the Effective Date, the City is currently developing a biodiversity strategy that will result in New City Laws impacting private property development and City policy regarding public property, parks and right-of-way improvements all related to landscaping regulations (including trees), urban forestry requirements, and site design. Additionally, City plans to consider New City Laws related to reducing light pollution in the local environment. In response to any New City Laws with respect to foregoing, Developer agrees to (a) comply with any plant (including tree) palette changes adopted as part of any such New City Laws, and (b) prepare a light pollution reduction plan for the Project that will include practices to curtail obtrusive light, while managing energy consumption, disruption of ecosystem and wildlife, human health and security, provided that (i) any such modified or new landscaping, biodiversity and light pollution requirements are otherwise applicable to the type of development proposed for the Project, and (ii) Developer has not already submitted to City a Building Permit application or other similar City permit applications for the applicable improvements; and

3.6.1.4 Other New City Laws that do not apply to the Property and/or the Project due to the limitations set forth above, but only to the extent that such New City Laws are accepted in writing by Developer in its sole discretion.

To the extent one or more New City Laws apply to the Property and/or Project in accordance with the terms set forth above, the Applicable City Law applicable to the Property and/or Project shall be deemed modified to include such New City Law. Notwithstanding the foregoing, if there is a disagreement between Developer and City regarding whether a New City Law creates a conflict, then Developer and City shall promptly meet and confer and use Good Faith Efforts to reach agreement on (i) whether there is a conflict, (ii) whether the New City Law

would result in a cost increase that is material in light of the total cost of the applicable Project phase, and, if so, (iii) ways to substantially offset such material cost increase.

3.6.2 **Other New Applicable Laws**. If any Other Agency passes any law or regulation or makes changes to any existing law after the Effective Date which prevents or precludes compliance with one or more provisions of this Agreement or requires changes in plans, maps, or permits approved by the City notwithstanding the existence 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 or modified law or regulation. Immediately after enactment of any such new or modified law or regulation, the Parties shall meet and confer and use Good Faith Efforts 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. In addition, Developer shall have the right to challenge the Other Agency's new or modified law or regulation preventing compliance with the terms of this Agreement, and, to the extent such challenge is successful, this Agreement shall remain unmodified and in full force and effect; provided, however, that Developer shall not develop the Project in a manner clearly inconsistent with a new or modified law or regulation applicable to the Project and adopted by any Other Agencies, 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 Development Projects as to which a development agreement has been executed. If any such new or modified law or regulation would materially and adversely affect the construction, development, use, operation, or occupancy of the Project or Property as contemplated by the Approvals then in effect, or any material portion thereof, such that the Project becomes economically infeasible as reasonably determined by Developer, then Developer, subject to its concurrent relinquishment of any and all then-remaining rights to the Precise Plan Development Reserve and rescission of all Approvals with respect to any future development pursuant to such Approvals, shall have the right to terminate this Agreement, upon not less than thirty (30) days prior written notice to the City. Notwithstanding any such termination, Developer shall be required to satisfy its obligations under this Agreement to pay required Impact Fees and provide the Required Exactions, Community Benefits and Public Benefits described in this Agreement and the Approvals (i) in connection with any new Building or other improvement as to which Developer has Commenced Construction or (ii) in connection with any then-existing Subsequent Approval pursuant to which Developer Commences Construction, and without refund of any payments, unwinding of any conveyances, cancellation of dedications or offers of dedication, or otherwise reversing any contributions previously made by Developer. Prior to exercising the foregoing right to terminate this Agreement, Developer shall have the right to require City to meet and confer with Developer in order to determine the potential for changes to the Project that might mitigate the effect of any such new or modified law on the Project's feasibility. City agrees to use Good Faith Efforts to work with Developer to identify any mutually agreeable changes.

3.6.3 **Record of Applicable City Law and Approvals**. Prior to the Effective Date of this Agreement, the Parties shall prepare two sets of the Existing Approvals and Applicable City Law applicable to the Project as of the Effective Date, one set for City and one set for Developer, to which shall be added from time to time, Subsequent Approvals and New City Law, so that if it becomes necessary in the future to refer to any of the Approvals or Applicable City Law, there will be a common, current set available to the Parties. Failure to include in the sets of Approvals and Applicable City Law any Subsequent Approval, rule, regulation, policy, standard

or specification that is within the Applicable City Law and Approvals as described in this Agreement shall not affect the applicability of such Subsequent Approval, rule, regulation, policy, standard or specification.

3.7 **Mitigation Measures and Conditions.** If Developer constructs any portion of the Project, Developer shall to the extent applicable to such construction, satisfy and comply with the mitigation measures specified in the MMRP as well as all conditions of the Approvals for the Project, which are incorporated in this Agreement by reference. Developer's obligations under this Section 3.7 shall survive the expiration or earlier termination of this Agreement.

3.8 **Applicable Codes.**

3.8.1 **General Rule**. Unless otherwise expressly provided in this Agreement, the Project shall be constructed in accordance with the provisions of the Construction Codes in effect at the time of application submittal of the appropriate Building Permit, Demolition and Grading Permit, Demolition Permit, or other construction permit(s) for the Project. As used herein, "**Construction Codes**" means, collectively, the Building Codes and Guidelines and the City Construction Specifications. "**Building Codes and Guidelines**" means and includes (a) the California Building Standards Code, California Fire Code and California Energy Code as adopted in Title 24 of the California Code of Regulations, (b) City Solid Waste Program Development Guidelines, (c) City Customer Guidelines for Recycled Water Use, and (d) City Stormwater Quality Guidelines for Development Projects, as each may be amended from time to time, as each relates to building standards. "**City Construction Specifications**" means (i) City Public Works Department Standard Provisions and Standard Details and (ii) City's other standard construction specifications. For avoidance of doubt, as used in this Section 3.8, the term Building Codes and Guidelines includes any and all provisions in the California Building Standards Code, California Fire Code and California Energy Code, as each may be amended from time to time, that City may adopt from time to time and apply to construction and building standards.

3.8.2 **Exceptions**. Notwithstanding Section 3.8.1, but subject to the qualifications in this Section 3.8.2, if Developer submits a complete building and/or excavation permit application which also includes detailed design plans for substantially all of the District Utility System within a given Phase to City for review, new City Construction Specifications adopted by City after the date of such submission which would require redesign of the District Utility System as it has been permitted by City shall not apply. City further agrees that new City Construction Specifications adopted by City after the Effective Date of this Agreement shall not apply to other horizontal infrastructure in the public right-of-way for the Project (e.g. roadways, pedestrian/bicycle paths, sidewalks, public utility infrastructure), if the application of such new City Construction Specifications would (i) limit or reduce the density or intensity of the Project, (ii) require any material reduction in the square footage, height or bulk of a proposed building or any reduction in the number of proposed buildings, or (iii) require Developer to install new or modified public improvements not required by the Existing Approvals if doing so would result in a cost increase to Developer that is material in light of the total cost of the applicable Project phase. The exceptions authorized by this Section 3.8.2 shall not apply to the extent new City Construction Specifications have been adopted for the express purpose of either (a) protecting public health or safety or (b) complying with new regional, State, or Federal laws or regulations. The exceptions in this Section 3.8.2 shall only apply during the life of the Vesting Tentative Map that otherwise

would be in effect pursuant to California Government Code section 66452.6 (or any successor law) if not for this Agreement.

3.9 **Encroachment and Excavation Permits**.

3.9.1 **City Permits**. The Project will require one or more City encroachment and/or excavation permit(s) for infrastructure improvements in or on City's right-of-way, City public land, or City easement areas. Subject to Section 3.8.2, such improvements will be constructed in accordance with the latest version in effect at the time of application submittal for the required permit for such infrastructure, including, but not limited to, the Standard Provisions and Standard Details of the City of Mountain View, Design Details of the City of Mountain View, the Standard Specifications of the Department of Transportation of the State of California (Caltrans) dated 2018 and subsequent updates to that 2018 edition, the Standard Plans of the Department of Transportation of the State of California (Caltrans) dated 2018 and subsequent updates to that 2018 edition, the latest version of the California Manual of Uniform Traffic Control Devices, and the Project improvement plan(s) prepared by the Project's engineer(s) and as approved by the City Engineer in tandem with required permit(s). City agrees to extend the timeline for removal of improvements installed under a City-issued standard encroachment agreement to one hundred eighty (180) days (except in the event of an emergency) as provided in **Exhibit O**. Removal requirements with respect to any District Utility System encroachments are addressed separately in the Master Encroachment Agreement Terms in **Exhibit N** to this Agreement.

3.9.2 **Other Permits**. As deemed necessary based on location of construction activity, Developer shall apply for a Caltrans encroachment permit for all work within Caltrans jurisdiction; apply for permits and inspections with VTA for any construction activity adjacent to light rail right-of-way including construction of POPA Open Space, bus stop modifications and upgrades on Middlefield Road, and District Utility System undercrossing of light rail; and apply for GO-88B approval with the CPUC for any safety upgrades at the Middlefield Station and midblock crossing improvements, including traffic signals occurring immediately adjacent to the light rail right-of-way on Middlefield Road with concurrent approval from VTA. Any work within the State right-of-way must be in accordance with Caltrans requirements. For any work within the right-of-way of another jurisdiction, Developer shall apply for the appropriate encroachment permit (or as otherwise required by the jurisdiction) from such jurisdiction, and all such work must be in accordance with the jurisdiction's requirements.

3.10 **Optional District Utility System**. Developer may propose establishing a private district utilities system serving portions of the Project, including a Central Utility Plant located within Office Building O1 and underground lines, which may provide one or more services including recycled water, wastewater, thermal energy (heating and cooling) and electric power (each discrete activity, a "**District Utility System**"). Each District Utility System shall be subject to City review and approval as part of a Subsequent Approval, and shall be subject to all City or Other Agency Approval and permitting processes required for such District Utility System, including execution of a Master Encroachment Agreement between Developer and City as more specifically set forth in Section 3.3.5 above.

3.11 **Water and Sewer Capacity**. City has found the Project to be consistent with the General Plan which anticipates that there will be sufficient potable water and sanitary sewer capacity to serve future development contemplated by the General Plan, including the Project. However, nothing in this Agreement shall be deemed to exempt the Project or the Property or any portion thereof from any water use rationing requirements that may be imposed on the City system on a City-wide basis from time to time or be construed as a reservation of any existing sanitary sewer or potable water capacity. If District Utility Systems are pursued by Developer, usage fees for sewer shall apply based on actual demand placed on the respective City systems at rate(s) to be determined by City.

3.12 **Construction Parking and Staging**. Developer may from time to time request use of City-owned land for construction staging or temporary parking related to development of the Project. If such use is approved by City in its discretion at the time it is proposed, such use shall be subject to a construction staging license agreement in form reasonably acceptable to City and approved by the City Attorney, which includes, among other terms and conditions, payment of a fair market value license fee and insurance and indemnity requirements.

ARTICLE 4
FEES, TAXES AND ASSESSMENTS

4.1 **Impact Fees**.

4.1.1 **Impact Fees During Fee Lock Period**. During the Initial Term, including any extension thereof for Force Majeure Delay as provided in Section 8.2.2 ("**Fee Lock Period**"), City shall only impose those Impact Fees that City has adopted as of the Effective Date ("**Existing Impact Fees**"), as itemized on **Exhibit I**, subject to all Existing Impact Fee escalation provisions in effect on the Effective Date.

4.1.2 **Impact Fees Following Expiration of Fee Lock Period**. Except as otherwise provided in this Section 4.1.2 below, following expiration of the Fee Lock Period, any and all new Impact Fees adopted after the Effective Date which are in effect and any increases in Existing Impact Fees above and beyond existing escalation provisions, if any, shall apply to the Project, provided, however: (a) Developer shall receive a credit of up to Eleven Million Dollars ($11,000,000), plus the product of $11,000,000 (or the then-remaining balance thereof) times the percentage increase in CCI between the Effective Date and the date on which Developer is obligated to pay any such new Impact Fees or increases (above and beyond existing escalation provisions) in Existing Impact Fees towards any such new or increased Impact Fees; and (b) no new or increased Impact Fees shall be charged on (i) residential development or (ii) redevelopment of Existing FAR (i.e. only net new Office square footage shall be subject to the new or increased Impact Fees).

4.1.3 **Impact Fee Credits and Waivers**. Developer shall receive credit for the payment of Impact Fees in accordance with the provisions of the City Code and receive waivers from payment of Impact Fees in accordance with Applicable City Law and as identified in this Section 4.1.3.

4.1.3.1 **Impact Fee Credit for Replacement of Existing Office Space**. The Parties acknowledge that the Property currently contains 684,645 gross square feet of space in 23 office buildings, which Developer will need to demolish in order to build out the Project. The current address and square footage of each existing building is set forth in **Exhibit C, Table C2**. In calculating Impact Fees based on net new square footage, Developer shall receive credit for demolition of existing office buildings on the Property based on **Table C2**; provided, however, in the event a building is only partially demolished, then such credit shall be based on the actual amount of demolished square footage as set forth in the City-issued Demolition Permit. Square footage credit will be earned for each existing building when demolition is complete as determined by City, and thereafter shall accumulate in an Office-related Impact Fee credit ledger as maintained and updated from time to time, as appropriate, by City. The City will maintain the credit balance as a cumulative total based on demolition completed to date and Demolition Permits and Building Permits issued for new construction to date. Upon Developer's request, City shall provide Developer a report showing demolished office Impact Fee credit additions and subtractions.

4.1.3.2 **Impact Fee Waivers for Grocer.** Developer acknowledges the community's strong interest in locating a grocery store within the Precise Plan area to serve new and existing residents. As such, Developer shall make Good Faith Efforts to negotiate a lease with a grocery store operator to locate in Active Use Space (estimated up to 13,000 square feet within Residential Building R1). To further encourage and support attracting a grocer, City agrees that if Developer succeeds in arranging for a grocery store in Phase 1, upon issuance of a Certificate of Occupancy for the grocery store, Developer shall receive a credit against future Impact Fees otherwise owed for the Project equal to the Impact Fees paid by Developer for the grocery space, except that Developer shall pay the required Nonresidential Housing Impact Fee for said grocery space.

4.2 **Processing Fees**. City may charge and Developer is obligated to pay all Processing Fees for processing applications for Subsequent Approvals or otherwise related to implementing development of the Project, plus all cost recovery fees, including for any required supplemental or other further environmental review, or any other studies needed in the course of permit review, plan checking and inspection and monitoring, at the rates which are in effect at the time those permits, approvals, entitlements, reviews or inspections are applied for, requested or required. By entering into this Agreement Developer accepts and shall not protest or challenge imposition of the types and amounts of Processing Fees in effect as of the Effective Date. Developer acknowledges that: (a) certain application Processing Fees may be set in fixed amounts for each application or task as stated in City's Master Fee Schedule, which is charged at the amount in effect as of application submission and paid as a condition to City accepting an application; (b) certain application Processing Fees may be based on actual staff time worked, which is charged at the hourly rate set by City for the work at the time the work occurs, which may be increased from time to time, and which shall be paid by advance deposit which City may require to be supplemented from time to time; and (c) certain application Processing Fees may be required to pay for third party assistance, including but not limited to plan checkers, environmental consultants and outside legal counsel, which also shall be paid in full prior to commencement of such work. The above noted Processing Fees may also be captured in a separate Staffing and Processing Agreement executed by the Parties which could support implementation of the Project in a timely fashion. If the Parties enter into a separate Staffing and Processing Agreement, then, in the event

of a conflict between the provisions of this Agreement and the Staffing and Processing Agreement, the provisions of the Staffing and Processing Agreement shall control.

4.3 **Connection Fees**. Developer shall pay any Connection Fee assessed by utility providers, City and Other Agencies at the rates in effect from time to time.

4.4 **Other Agency Fees**. Nothing in this Agreement shall preclude City from (i) collecting Other Agency Fees from Developer that are imposed on the Project by an Other Agency having jurisdiction over the Project and which City collects on behalf of such Other Agency; or (ii) withholding permit issuance until proof of payment by Developer of such Other Agency Fees has been received by the City if such withholding of permits is a City-wide practice.

4.5 **Taxes and Assessments**. Developer covenants and agrees to pay prior to delinquency (i) all existing taxes and assessments and (ii) subject to the terms of this Section 4.5, any and all new taxes or assessments that are adopted after the Effective Date. As of the Effective Date, City is unaware of any pending efforts to initiate, or consider applications for new or increased special taxes or assessments covering the Property, or any portion thereof. Subject to the terms of this Agreement, City shall retain the ability to initiate or process applications for the formation of new assessment districts or imposition of new special taxes covering all or any portion of the Property, but only if such taxes or assessments are adopted by or after voter approval, or approval by the landowners subject to such taxes or assessments, as applicable, and are imposed on other land and Development Projects of the same general category within the jurisdiction of City in a reasonably proportional manner as determined by City, and, as to assessments, only if the impact thereof does not fall disproportionately on the Property as compared to the benefits accruing to the Property as indicated in the engineers report for such assessment district. Nothing herein shall be construed so as to limit Developer from exercising whatever rights it may have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property. In the event an assessment district is lawfully formed to provide funding for services, improvements, maintenance or facilities which are substantially the same as (i) those services, improvements, maintenance or facilities being funded by the Impact Fees or Required Exactions to be paid by Developer under the Approvals or this Agreement, or (ii) those services, improvements, maintenance, or facilities that Developer is obligated to construct or perform pursuant to this Agreement or the Approvals, then any such Impact Fees or Required Exactions payable by Developer, or obligations to construct or perform, shall be subject to reduction/credit in an amount equal to Developer's new or increased assessment under the assessment district. Alternatively, the new assessment district shall reduce/credit Developer's new assessment in an amount equal to such Impact Fees or Exactions to be paid by Developer or the value of the work or service performed or to be performed under the Approvals or this Agreement. In calculating any reduction or credit, the Parties shall take into account the timing of payment of the Impact Fee or Exaction and the new or increased assessment.

4.6 **Failure to Pay Fees**. In addition to any other remedies provided for by this Agreement, the failure of Developer to timely pay any applicable fees shall be grounds for City to refuse issuance of any permit required for development, and, if a permit has nevertheless been issued, City may refuse issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy for such building. City shall promptly issue the Certificate of Occupancy or Temporary

Certificate of Occupancy, following Developer's payment of the applicable fee(s) or Developer's cure or satisfaction of the fee payment obligation in accordance with this Agreement.

ARTICLE 5
EXACTIONS, COMMUNITY BENEFITS AND PUBLIC BENEFITS

5.1 **Required Exactions**. In addition to the mitigation measures specified in the MMRP and other Exactions that City may require under the Approvals, Applicable Law and this Agreement, Developer agrees that the Exactions set forth in this Section 5.1 (collectively, "**Required Exactions**") are of particular importance to the City and the community, and Developer accepts such Required Exactions and agrees that such Required Exactions are justified, appropriate and in compliance with Applicable Law. Developer agrees not to challenge any Required Exactions and to deliver such Required Exactions as and when required by this Agreement and the Approvals.

5.1.1 **Affordable Housing**. As more fully set forth in the Conditions of Approval and the Affordable Housing Plan, Developer shall satisfy its below-market-rate housing obligation under Article XIV (Affordable Housing Program) of Chapter 36 (Zoning) of the City Code by implementing an alternative mitigation for providing affordable housing pursuant to City Code section 36.40.30 in accordance with City's BMR housing program administrative guidelines ("**BMR Alternative Mitigation**") as follows:

5.1.1.1 As a condition to issuance of the first Building Permit for a new building, Developer, at no cost to City, shall dedicate and convey to City, or its assignee or designee, fee title to Residential Parcels R4a and R6 with each site consisting of a separate legal parcel(s), with each parcel having access to a public street, buildings demolished and subsurface improvements removed, building pad areas rough graded, site frontage improvements complete, and utilities installed to the parcel line and otherwise in the condition required by Section 5.4 and the Existing Approvals, whereupon Developer shall have no further obligation with respect to such parcels.

5.1.2 **Parkland Obligations**. As more fully set forth in the Parks Delivery Plan and the Existing Approvals, Developer shall satisfy its obligation under Chapter 41 of the City Code to dedicate 0.006 acres of land per new market rate dwelling unit, or pay an in-lieu fee ("**Parkland Requirement**"), by undertaking the obligations set forth in Sections 5.1.2.1 through 5.1.2.6 below (collectively, "**Parkland Obligations**"). The Parcel Park 1, Parcel Park 2, Parcel Park 3 and Parcel Park 4 sites shall consist of a separate legal parcel(s), with each parcel having access to a public street, buildings demolished and subsurface improvements removed, rough graded, site frontage improvements complete, and utilities installed to the parcel line and otherwise in the condition required by Section 5.4 and the Existing Approvals, whereupon Developer shall have no further obligation with respect to such parcels.

5.1.2.1 **Future Maude Park**. Developer shall dedicate to City fee title to approximately 5.11 acres, but no less than 5.0 acres, for future Maude Park within the times set forth in the Parks Delivery Plan;

5.1.2.2 **Bridge Open Space**. Developer shall dedicate to City fee title to and, as an interim compliance measure, provide an irrevocable offer of land dedication per Section 5.1.2.6 of approximately 1.36 acres for future Bridge Open Space within the times set forth in the Parks Delivery Plan;

5.1.2.3 **Gateway Park**. Developer shall dedicate to City fee title to the approximately 0.50 acres of land for future Gateway Park within the times set forth in the Parks Delivery Plan;

5.1.2.4 **Multi-Modal Pathway Public Access Easements**. Developer and City shall enter into public access easement agreements with respect to the public's use of the multi-modal connection pathways for pedestrians and bicycles as shown in the Master Plan and record such agreement in the Official Records. The final location of the public access easement areas shall be as shown on the applicable phased final map in accordance with the Existing Approvals and executed and recorded prior to issuance of Building Permits for the building(s) abutting the multimodal pathways on the same parcel. Issuance of Certificate(s) of Occupancy for building(s) abutting the multimodal pathways, or applicable portions thereof, shall be conditioned upon Developer's satisfactory Completion of construction of the multi-model connection pathways, or applicable portion thereof, in accordance with plans and specifications approved by the City.

5.1.2.5 **Ellis POPA Open Space**. Developer and City shall enter into City's standard form Covenants and Agreements Relating to Public Access and Open Space, as modified pursuant to the terms set forth in Section 5.3 below and the Ellis POPA Open Space Terms attached as **Exhibit H** to this Agreement ("**POPA Agreement**"), providing for the public's rights to access and use for recreational purposes the Ellis POPA Open Space and City's rights to use the Ellis Community Pavilion and Ellis Plaza, and record the POPA Agreement in the Official Records when specified by Section 5.3.2.3. The final location of the public access and use areas shall be as shown on the applicable phased final map. Execution of the POPA Agreement shall occur concurrently with the phased final map and prior to issuance of the Building Permits for the building(s) abutting the Ellis POPA Open Space on the same parcel. Developer, at its expense, shall develop the approximately 2.87 acre Ellis POPA Open Space in accordance with the requirements of the Approvals and this Agreement within the time set forth in the Parks Delivery Plan. Issuance of Certificate(s) of Occupancy for building(s) abutting the Ellis POPA Open Space shall be conditioned upon Developer's satisfactory Completion of construction of the Ellis POPA Open Space, including Ellis Community Pavilion and Ellis Plaza, in accordance with plans and specifications approved by the City (see Section 5.1.2.6 regarding granting of occupancy for the Ellis POPA Open Space).

5.1.2.6 **Interim Parkland Compliance**. Due to phased development of the Project, full compliance with the Project's parkland dedication requirements is not feasible at each Phase. As a result, Developer must provide interim compliance to the City to ensure the full parkland obligation will be met at each Phase should Developer fail to Complete all Phases of the Project. Developer is responsible for providing interim compliance in the following forms, based on the Parks Delivery Plan and the Approvals: (a) prior to Building Permit issuance for the first building in Phase 1, (i) dedicate to City fee title to Gateway Park, (ii) grant to City an irrevocable offer of land dedication of approximately 1.36 acres for Bridge Open Space as

shown on the Existing Approvals for Parcels Park 1 and 2, and (iii) satisfy Developer's remaining obligation through delivery of an irrevocable standby letter of credit in an amount equal to the in-lieu fee value of the open space deficit that remains based on the number of residential units in the Phase and inclusive of the portion of POPA Open Space yet to be Completed ("**Open Space Deficit**"), subject to annual escalation per **Exhibit G**; (b) Complete construction of a portion (approximately 1.94 acres in Phase 1) of the Ellis POPA Open Space in accordance with the timing set forth in the Parks Delivery Plan; (c) prior to Building Permit issuance for the first building in Phase 2, (i) dedicate to City fee title to the Bridge Open Space, and (ii) satisfy Developer's remaining obligation through delivery of a reissued/replacement irrevocable standby letter of credit in an amount equal to the in-lieu fee value of the Open Space Deficit, subject to annual escalation per **Exhibit G**, after which City shall return the first Open Space Deficit letter of credit to Developer; and (d) Complete construction of a portion (approximately 0.93 acres in Phase 2) of the Ellis POPA Open Space in accordance with the timing set forth in the Parks Delivery Plan. Developer anticipates (i) Completion of the Phase 1 Ellis POPA Open Space within one (1) year after issuance of any Certificate of Occupancy or Temporary Certificate of Occupancy for Residential Buildings R1 or R2, whichever is Completed later, and (ii) Completion of Phase 2 Ellis POPA Open Space within one (1) year after issuance of any Certificate of Occupancy or Temporary Certificate of Occupancy for Office Building O1. Accordingly, City will retain the letter of credit equivalent to the in-lieu fee value until such time each Phase of the Ellis POPA Open Space is Completed. Thereafter, only with Subsequent Approval of Phase 3 (Residential Buildings R3, R4b, and R5) and dedication to City of land for Maude Park, as shown on the Existing Approvals for Parcel Park 3, will the Project's parkland obligation be fully satisfied.

Each letter of credit shall be from an issuer and in a form reasonably acceptable to City and approved by the City Attorney. Each letter of credit shall provide that it will automatically be extended annually unless the issuer notifies City sixty (60) or more days before the expiration date that issuer elects not to extend it. Annual renewal of the letter of credit shall be timed to coincide with annual review of this Agreement, at which time the annual escalator factor shall be applied and incorporated into the new letter of credit. If the issuer of a letter of credit elects not to approve annual renewal of its letter of credit, or not to approve the annual escalator increase, Developer shall at least fifteen (15) days before expiration of the letter of credit obtain a replacement letter of credit from another issuer, subject to City's approval of the issuer and the form of letter of credit. City shall have the right to draw the full amount of a letter of credit that is about to expire and is not being renewed or replaced, to ensure City has security for Developer's remaining parkland compliance obligation. The dollar amounts of the letters of credit may be proportionately reduced from time to time as Developer meets the Project's parkland obligations; any such reduction(s) shall be subject to City's review and approval not to be unreasonably withheld, conditioned or delayed. City shall return the applicable letter of credit to Developer promptly following Developer's satisfaction of the applicable parkland obligation.

5.2 **Bonus FAR Requirements**. As of the Effective Date, in order for the Project to obtain the right to Nonresidential or Residential Bonus FAR, as applicable, in the Precise Plan, Developer shall implement the following measures in accordance with the Precise Plan:

5.2.1 **Jobs/Housing Linkage**. To ensure that Developer complies with its obligation to Complete construction of housing in consideration for the allotment of net new office space as required by the Precise Plan and the City's administrative guidelines for the Jobs-Housing

Linkage Program ("**Jobs/Housing Linkage Requirement**"), Developer agrees that the various Project components will be developed in Phases in accordance with the Phasing Plan, as it may be amended as provided in Section 3.5.1, and that Developer's ability to obtain Subsequent Approvals for Office uses and Office Buildings shall be conditioned upon Developer achieving the residential development related Completion and land dedication milestones set forth in the Phasing Plan.

5.2.2 **Green-Building Measures**. Developer shall design the Project to meet the following green building measures per the Precise Plan:

5.2.2.1 Developer shall meet the intent of LEED BD+C Platinum or equivalent green building standard for all nonresidential Buildings.

5.2.2.2 Developer shall achieve a minimum of 120 points on the GreenPoint Rated system (or equivalent) and provide sub-metering, or use other appropriate technology that tracks individual energy use, for each residential unit in a Residential Building.

5.2.2.3 All new construction (residential and nonresidential) shall meet the green building standards in section 3.10 of the Precise Plan.

5.2.3 **Waiver of Right to Density Bonus**. In consideration of the rights conferred on Developer under this Agreement, Developer shall not apply for or seek to develop any portion of the Property under any density or other development bonus available under Applicable Law, as further described below.

5.2.3.1 The Parties acknowledge that various state and local laws, including but not limited to California Government Code section 65915 *et seq.* ("**State Density Bonus Law**"), Zoning Ordinance section 36.40 *et seq.* ("**City Affordable Housing Program**") and Zoning Ordinance section 36.48.65 *et seq.* ("**City Density Bonus Law**"), as they may be amended from time to time, generally allow additional residential and/or non-residential density, incentives and modifications to development requirements for residential or mixed-use developments in exchange for inclusion of a percentage of on-site below market rate units, or the dedication of land suitable for construction of on-site affordable housing units. By entering into this Agreement, and adopting the Existing Approvals, City is allowing significantly more development than what is allowed under existing zoning and more that what would be allowed under existing zoning in conjunction with the State Density Bonus Law, City Affordable Housing Program, City Density Bonus Law, or any other state or local development bonus program.

5.2.3.2 By entering into this Agreement, Developer voluntarily and intentionally waives its ability to use the State Density Bonus Law, City Affordable Housing Program, or City Density Bonus Law, as they may be amended from time to time, or any other process or mechanism allowed under state or local law now or in the future to increase, modify, expand or change the amount of or design for development, both residential and nonresidential, on the Property from the Project as described in and regulated by the Existing Approvals and this Agreement. Developer agrees to pursue development on the Property solely within the regulatory framework of the Existing Approvals and this Agreement, with the understanding that the only allowed modifications, exceptions and variances to the Project are those afforded under the parameters and processes explicitly established therefor in the Existing Approvals and this

Agreement and allowed by Applicable City Law. City would not be entering into this Agreement and approving the Project, including the Existing Approvals, were Developer able to use any other development bonus in conjunction therewith, and City has negotiated this Agreement based on the specific land use program and Project design as established in this Agreement and in the Existing Approvals, inclusive of the modification processes allowed therein.

5.2.3.3 City, or any nonprofit affordable housing developer(s) in partnership with the City, may utilize the State Density Bonus Law, City Affordable Housing Program, or City Density Bonus Law, as they may be amended from time to time, or any other process or mechanism allowed under state or local law now or in the future, in any capacity to obtain entitlements for or receive funding for affordable housing development(s) on the Affordable Housing Sites, or to increase, modify, expand or change the amount of or design for residential development on the Affordable Housing Sites. No process or project pursued by City or any nonprofit affordable housing developer(s) on the Affordable Housing Sites shall (a) modify Developer's rights or obligations under this Agreement or the Approvals, or (b) require or cause, or would reasonably be anticipated to require or cause (i) Developer to provide or pay for materially more infrastructure to serve or as a result of such additional density or (ii) any additional or new analysis under CEQA with respect to any Subsequent Approval; nor shall the Approvals or this Agreement restrict, constrain or affect in any way any future affordable housing-related actions, developments, or funding by or on behalf of City or any nonprofit affordable housing developer(s).

5.2.4 **Community Benefits.** As of the Effective Date, the Developer must provide the following minimum community benefit contributions: (a) $27.25 per gross square foot of office space above an FAR of 0.4, and (b) $5.45 per gross square foot of residential space above an FAR of 1.0. Because the Existing Approvals for the Project authorize up to 397,936 square feet of Residential Bonus FAR and 622,925 square feet of Nonresidential Bonus FAR, the Parties agree that the Project's minimum community benefit contribution, with value calculated as of the Effective Date, must be no less than $19,143,457.00, plus the product of this value, or the then outstanding balance thereof, multiplied by the percentage increase in CPI between the Effective Date and the date upon which the full obligation is met. To satisfy the foregoing requirement, and to receive Nonresidential or Residential Bonus FAR as applicable, and the other benefits afforded to Developer under this Agreement, including vested rights, Developer shall make the payments and provide the benefits and contributions set forth in this Section 5.2 (collectively, "**Community Benefits**"), which has a total estimated value of Nineteen Million One Hundred Forty-Three Thousand Four Hundred Fifty Seven Dollars ($19,143,457.00), and which the Parties agree provide City with community benefits required for the Project under the Precise Plan. Developer agrees that the Community Benefits are justified, appropriate and in compliance with Applicable Law as a consequence of City approval of the Existing Approvals, and Developer accepts and covenants not to challenge any of the Community Benefits.

5.2.4.1 **First People Centric Fund Payment**. Within ninety (90) days following the first day of the Term, Developer shall pay City Five Hundred Thousand Dollars ($500,000) ("**First People Centric Fund Payment**"). The First People Centric Fund Payment shall be nonrefundable regardless of whether or not Developer proceeds with development of the Project.

5.2.4.2 **Small Business Diversification and Non-Profit Inclusion Program**. Developer shall implement, fund and construct, as applicable, the measures, programs and improvements generally described in Sections 5.2.4.2 A. through E. below, and as more particularly described in the Small Business Diversification and Non-Profit Inclusion Program.

A. In connection with the development of Residential Parcels R1 and R2, Developer shall construct the Phase 1 Active Use Subsidized Space within the ground floors of the Residential Buildings R1 and R2 and in the Ellis Community Pavilion located within the Ellis POPA Open Space. Developer's obligations with respect to ownership, operation and leasing of the Phase 1 Active Use Subsidized Space are set forth in the Small Business Diversification and Non-Profit Inclusion Program.

B. Developer's obligations with respect to the Active Use Subsidized Space shall continue until Developer has fulfilled all of its Active Use Subsidized Space obligations, regardless of tenant turnover. To ensure compliance with the Active Use Subsidized Space requirements, Developer shall execute, acknowledge and deliver to City for recordation in the Official Records, a Declaration of Restrictions and Covenants on Land with respect to the applicable parcel or parcels. Each Declaration of Restrictions and Covenants on Land shall remain in effect until the later of: (i) expiration of the Term of this Agreement, and (ii) the date that is ten (10) years following Completion of such space. Each Declaration of Restrictions and Covenants on Land shall be recorded in accordance with the terms of the applicable Approval, and shall have priority over the liens of any mortgages, deeds of trust, or other financing documents.

C. In addition to its commitments to develop, operate and lease the Phase 1 Active Use Subsidized Space as provided in Section 5.2.4.2.A. above, Developer, on behalf of itself and its successors and assigns, shall establish, fully fund and administer additional funds ("**Small Business Funds**") to be made available to Participating Groups in need of rental subsidy, operating funds, support services, or tenant improvement assistance within any Active Use Subsidized Space as more fully set forth in the Small Business Diversification and Non-Profit Inclusion Program. In addition, Developer shall report annually to City regarding its progress in allocating and expending the Small Business Funds.

D. Developer may (a) provide a portion of the Active Use Subsidized Space in Phase 3 of the Project so long as a minimum of 14,000 square feet is developed and remains in Phase 1, and/or (b) relocate from Phase 1 to Phase 3 space designated as Active Use Subsidized Space in Phase 1 above the minimum 14,000 square feet. In the event of such space relocation, the references in this Section 5.2.4.2 to Phase 1 Active Use Subsidized Space shall include such Phase 3 space to the extent applicable.

E. The total monetary and non-monetary value of the Small Business Diversification and Non-Profit Inclusion Program, including the Active Use Subsidized Space and Small Business Funds, are valued as of the Effective Date at Eighteen Million Six Hundred Forty Three Thousand Four Hundred Fifty Seven Dollars ($18,643,457.00), as further detailed in **Exhibit I**.

F. Developer's obligation under Section 5.2.4.2.B to record the Declaration shall survive the expiration or termination of this Agreement and following such recording, Developer shall remain obligated to perform its obligations under the Declaration as more specifically set forth therein.

5.3 **Public Benefits**. Developer agrees to provide the following voluntary "**Public Benefits**" to benefit the City and its residents, as additional consideration for the benefits, including vested rights, afforded to Developer under this Agreement.

5.3.1 **Second People Centric Fund Payment**. Prior to issuance of the first Building Permit for an Office Building in the Project, Developer shall pay City an additional People Centric Funds payment equal to the sum of: One Million Dollars ($1,000,000) plus the product of $1,000,000 times the percentage increase in CPI between the Effective Date and the date on which such payment is made ("**Second People Centric Fund Payment**").

5.3.2 **Parkland and POPA Open Space Benefits**. Developer shall provide the following additional Park and POPA-related benefits:

5.3.2.1 **Maude Park Public Amenities Funding**. To facilitate City's ability to design and improve Maude Park in a timely manner and contribute towards an element or unique amenity within the park as determined through the City's park design process, Developer shall pay to City within the times set forth in the Parks Delivery Plan an amount equal to the sum of Nine Million Dollars ($9,000,000) plus the product of $9,000,000 (or the remaining balance thereof) times the percentage increase in CCI between the Effective Date and the date on which such payment is made ("**Maude Park Developer Funding**"). Developer shall provide the Maude Park Developer Funding to City as follows: (a) twenty-two percent (22%) of the total funding amount shall be provided to the City for design and design-related costs when specified in Section 5.3.2.2.B; and (b) seventy-eight percent (78%) of the total funding amount shall be provided to City for construction of Maude Park, including a unique element(s), amenity(ies) or improvement(s) (such as a nature play area(s), custom play structure(s), aquatic facility, community pavilion(s), structure(s) or building(s), outdoor amphitheater, botanical garden, greenhouse, etc.) as identified through the City's park design process for Maude Park, when specified in Section 5.3.2.2.C. In consideration of Developer's commitment to provide the Maude Park Developer Funding and make a sizeable land dedication for Maude Park, the City has agreed to Developer's involvement in the park development process as outlined in **Exhibit G** and as further described in Section 5.3.2.2.

City will make Good Faith Efforts to proceed through the park design and construction process as outlined in **Exhibit G, Table G2** with Developer involvement as noted in the Table and Section 5.3.2.2 below. Upon notification of anticipated land dedication by Developer to City as described in Section 5.3.2.2.A and included in Table G2, City will assign a Project Manager within six months of said notification and will maintain a Project Manager throughout the duration of the design and construction process for Maude Park. The park design process is a public process subject to adjustments in schedule or process in response to input from the community or decision makers (e.g. Parks and Recreation Commission, Visual Arts Committee, or City Council) and as such, the schedule in Table G2 may be adjusted from time to time.

5.3.2.2 **Developer Involvement in Maude Park Design.** As outlined in **Exhibit G, Table G2**, Developer shall be involved in the Maude Park design process as follows:

A. Developer shall notify the City in writing at least two (2) years prior to the date Parcel Park 3 (Maude Park) will be dedicated and made available for City's sole use in accordance with the City's land acceptance requirements in the Approvals.

B. Within ninety (90) days after providing City the notice specified in Section 5.3.2.2.A, Developer shall provide the first installment of Maude Park Developer Funding as provided in Section 5.3.2.1.

C. At least ninety (90) days prior to City's completion of 100% park design plans and Council approval thereof (Step 7 in Exhibit G, Table G2), Developer shall (i) deliver Parcel Park 3 to the City in accordance with the City land acceptance requirements, as specified in the Approvals, and (ii) pay to City the second installment of Maude Park Developer Funding per Section 5.3.2.1. Developer acknowledges that if it cannot deliver Parcel Park 3 to City within this timeframe, City will pause the design process until the point at which the land is available, as City requires ownership and possession of the land to complete 100% park design plans and initiate the public contracting/bidding process.

D. Following design approval by the City Council, if the City determines proceeding with construction of Maude Park is not feasible due to lack of funding, staff resources, or a combination thereof, then City, at its sole discretion, can proceed per subsections (a), (b), or (c) below. Nothing in this Section 5.3.2.2 shall prohibit the City from entering into an agreement with Developer to assist in the construction of Maude Park or any portion thereof.

(a) Should City determine it does not have adequate funding available to proceed with construction of Maude Park, then City and Developer will meet and confer to determine the feasibility of entering into a potential funding agreement between the Parties, whereby Developer provides funding for construction of Maude Park to City and City commits to paying back such funding with interest over time. City would then proceed with bidding and managing the construction.

(b) Should City determine it does not have adequate staffing resources to proceed with construction of Maude Park, then City and Developer will meet and confer to determine the feasibility of entering into a potential reimbursement agreement between the Parties, whereby Developer constructs the improvements and City reimburses Developer a portion of the costs of such work. The reimbursement agreement would be in City's standard agreement form and subject to all applicable federal, state, and local requirements for construction projects utilizing City funds. All such work would be subject to Prevailing Wage Laws.

(c) Should City determine it does not have adequate funding or staffing resources available to proceed with construction of Maude Park, then

the City will meet and confer with Developer to determine feasibility of pursuing both agreements per subsections (a) and (b).

5.3.2.3 **City Use of Ellis POPA Open Space**. Developer shall make the Ellis POPA Open Space available to City and the public as described in the POPA Agreement, which shall be recorded against the Ellis POPA Open Space immediately following recordation of the phased final map creating the parcel on which such space is located. The POPA Agreement shall provide, among other things, for (a) City's right to use the approximately 1,000 square foot stand-alone community room located in the Ellis POPA Open Space ("**Ellis Community Pavilion**") for City Events, and (b) City's right to use the plaza portion of the Ellis POPA Open Space located directly adjacent to the R1 Residential Building ("**Ellis Plaza**") for City Events, on terms set forth in **Exhibit H** and the POPA Agreement.

5.3.3 **Bridge Concept and Design**

5.3.3.1 **Bridge Feasibility Study**. The Parties acknowledge that Developer expended Two Hundred Fifty Thousand Dollars ($250,000) ("**Bridge Concept Funding**") during the City's review of the Master Plan to retain an engineering firm to prepare a conceptual study for a proposed above-ground pedestrian-bicycle bridge to cross the VTA light rail corridor entitled "Structure Conceptual Design Memorandum – East Whisman/Bicycle Pedestrian Overcrossing" by Biggs Cardosa Associates dated September 13, 2022, and on file with the City ("**Bridge Feasibility Study**"). The Bridge Feasibility Study preliminarily confirmed that the proposed Bridge Open Space site is adequate in size and can reasonably accommodate a utility encroachment for a District Utility System serving the Project in tandem with future bridge infrastructure in accordance with current VTA and accessibility requirements. The Bridge Concept Funding has been expended, and City shall have no obligation to contribute to or reimburse any part of the Bridge Concept Funding, regardless of whether or not Developer proceeds with development of the Project.

5.3.3.2 **Bridge Design Process and Potential Conflicts**. The design and structural configuration of the pedestrian-bicycle bridge are not known at this time. The Parties anticipate that the bridge design process will likely occur after Developer has installed the District Utility System, should Developer opt to pursue such system. City will utilize the Bridge Feasibility Study as background and a starting point in the City-led bridge design process with public input from the community and City Council. During the design process, the City will conduct outreach with adjacent property owners and make Good Faith Efforts to minimize adverse impacts on the Project and any District Utility System improvements that Developer may have previously installed. Developer acknowledges that City cannot guarantee that no conflicts will arise between the bridge and previously installed District Utility System improvements. To the extent conflicts do arise, City will meet and confer with Developer to discuss the identified conflicts and collaborate with Developer to identify potential solutions to limit impacts to the District Utility System improvements, which may include, among other things, potentially revising the bridge design to avoid conflicts with District Utility System infrastructure or temporary conflicts related to construction, subject to Developer agreeing to pay the incremental increase in design and construction costs associated with such redesign. The existence of District Utility System improvements in the immediate vicinity of the crossing of the VTA/CPUC property shall not constitute a reason to redesign the bridge nor a basis for Developer to contribute funds to City;

however, the cost of incremental adjustments to the bridge design or temporary construction impacts that are necessary due to the location of District Utility System improvements, which were not previously disclosed in the Bridge Feasibility Study or known at that time, may constitute costs for which City may seek contribution from Developer. Developer agrees not to oppose or delay construction of the bridge or its infrastructure. Further, if relocation is required by City, Developer shall relocate, at its sole cost, any utilities or District Utility System improvements as may be necessary to accommodate the bridge and its infrastructure. Any such relocation shall be in accordance with the separately executed Master Encroachment Agreement.

5.3.3.3 **Potential Funding Agreement**. If City determines it does not have adequate funding available to proceed with construction of the bridge, City and Developer will meet and confer to determine the feasibility of entering into a potential funding agreement between the Parties, whereby Developer would provide funding for construction of the bridge and City would commit to paying back Developer over time (with interest). The City would then proceed with bidding and managing the construction. Nothing in this Section 5.3.3 shall prohibit the City from entering into a funding agreement with Developer, whereby Developer constructs all or a portion of the bridge, and City pays Developer an agreed upon amount for such work.

5.3.4 **Public Art Benefit**. Developer shall fund and construct, or cause to be constructed, an artistic feature in the Ellis POPA Open Space, with a cost of not less than the sum of: One Million Dollars ($1,000,000) plus the product of $1,000,000 times the percentage increase in CPI between the Effective Date and the date on which such art feature is installed ("**Public Art**"). At the time of zoning permit application for development that includes the Ellis POPA Open Space, Developer shall provide, as part of application: (i) the vision statement and design principles for the Public Art, (ii) the proposed location(s) for the Public Art, (iii) the process and timeline for production and installation, and (iv) the conceptual design(s) of the Public Art. At the time of Building Permit submittal, Developer shall provide to City: (i) the name of the artist, designer, or design studio and their bios and representative work, and (ii) and the final Public Art design, which shall be subject to City review and approval, not to be unreasonably withheld, conditioned or delayed. Upon City's request, Developer shall provide confirmation of the cost of the Public Art, including costs, commissions, and fees associated with procurement, creation, and installation of such Public Art. The Public Art location shall be included on the Building Permit for construction of the Ellis POPA Open Space and installation of the Public Art shall be completed prior to final inspection under that Building Permit.

5.3.5 **Shared Parking**. Developer's obligation to provide free public parking for park visitors shall be set forth in a separate Shared Parking Use Agreement in a form reasonably acceptable to City and approved by the City Attorney to include, among other terms, the Shared Parking Use Agreement Terms identified in **Exhibit K**. The Shared Parking Use Agreement shall be recorded against the parcel(s) on which the Shared Parking will be located at the time the phased final map creating such parcel(s) is recorded and, in all events, prior to issuance of a Building Permit for the Parking Structure P2.

5.3.6 **Tax Point of Sale Designation**. Developer shall use Good Faith Efforts to the extent allowed by Applicable Law to require all persons providing bulk lumber, concrete, structural steel, and pre-fabricated building components, such as roof trusses, to be used in connection with construction and development of, or incorporated into, the Project, to (a) obtain a

use tax direct payment permit; (b) elect to obtain a subcontractor permit for the job site of a contract valued at Five Million Dollars ($5,000,000) or more; or (c) otherwise designate the applicable portion of the Property as the place of use of material used in construction of the Project in order to have the local portion of the sales and use tax distributed directly to City instead of through the County-wide pool. Unless Developer demonstrates to City that such information is not reasonably obtainable, then Developer shall on an annual basis provide City with such information as shall be reasonably requested by City regarding subcontractors working on the Project with contracts in excess of the amount set forth above, including a description of all applicable work and the dollar value of such subcontracts. City may use such information to contact each subcontractor who may qualify for local allocation of sales and use taxes to City. To facilitate implementation of these tax point of sale designation requirements, Developer shall use Good Faith Efforts to include in each contract for the construction of Building core and/or shell work the following contract provision:

> "Contractor shall, to the extent allowed by the California Department of Tax and Fee Administration and applicable sales and use tax laws and regulations ("**Sales and Use Tax Laws**"), coordinate with the City of Mountain View to designate the City of Mountain View as the place of use of any materials, goods, or services, purchased by Contractor and the origin of any local sales taxes generated by Contractor and its subcontractors; provided, however, in no event shall Contractor be required to do anything that is in violation of or inconsistent with such Sales and Use Tax Laws."

5.4 **Condition of Dedicated Properties**. Title to all real property to be granted or dedicated by Developer to City (or its assignee or designee) pursuant to the Existing Approvals and this Agreement, including dedication of land for parks and Affordable Housing, shall be free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, or other such exceptions of record or known to Developer, except for incidental easements and liens for current, non-delinquent taxes and assessments and such other incidental exceptions, if any, as City may approve in its reasonable discretion, and Developer shall obtain any subordination agreements, deed of trust reconveyances or other documentation as necessary to remove any exceptions reasonably disapproved by City. To the extent any Hazardous Materials are located on, under, or about such dedicated property or the dedicated property is a Contaminated Site, then to the extent not capable of mitigation by City or the affordable housing developer subject to Section 5.4.1 below, Developer, at its expense, shall be responsible for abating and remediating or causing the abatement and remediation of such property in compliance with Applicable Law and City requirements as identified in the Existing Approvals so that City may make use of such property for its intended use as a park or Affordable Housing Site without having to incur any expenses to abate or remediate Hazardous Materials or Contaminated Site conditions.

5.4.1 **Developer Payment of Vapor Intrusion Control Costs**. Developer acknowledges that vapor intrusion controls may be required under Applicable Law as part of the development for residential uses of Residential Parcels R4a and R6. As such Developer shall pay to City an amount equal to the product of Thirteen and No/100 Dollars ($13.00) (subject to annual escalations based on increases in CCI during the period from the Effective Date and the date on which such payment is made) multiplied by the number of square feet in the proposed building's ground floor area subject to mitigation as described and executed in accordance with Existing Approvals.

ARTICLE 6
OBLIGATIONS OF THE PARTIES

6.1 **Developer**.

6.1.1 **Development in Conformance with Agreements and Approvals**. In consideration of City entering into this Agreement, Developer agrees that, so long as this Agreement is in effect, the Project shall be developed in conformance with all of the applicable terms, covenants, and requirements of this Agreement and the Approvals, as they may each be hereafter amended with the consent of City and Developer in accordance with the provisions of Sections 8.5, 8.6, 8.8, or 8.9. Nothing in this Agreement shall prohibit Developer from challenging any City action or inaction with respect to the Property or Project, including any City decisions regarding Subsequent Approvals.

6.1.2 **Prevailing Wage Laws**. Certain contracts for work on the Property, including contracts for construction and installation of public improvements, may be public works contracts if paid for in whole or in part out of public funds, as the terms "public work" and "paid for in whole or in part out of public funds" are defined in and subject to exclusions and further conditions under California Labor Code sections 1720-1720.6 or be subject to payment of prevailing wages under the federal Davis-Bacon Act (40 U.S.C. 3141 *et seq*.) (collectively, **"Prevailing Wage Laws"**). In connection with the Project, Developer shall comply, and shall include in its contracts with its general contractors a provision that requires the contractors to comply, with the requirements of all Prevailing Wage Laws as and to the extent required by Applicable Law.

6.2 **City**.

6.2.1 **City's Good Faith in Proceedings**. As further provided in Section 3.3 and Article 9 of this Agreement, in consideration of Developer entering into this Agreement, City agrees that it will accept, process, and review, using Good Faith Efforts to do so in a timely manner, all applications for Subsequent Approvals, including applications for environmental and design review, demolition, grading, and construction permits, or other permits or entitlements for use of the Property, in accordance with the terms of this Agreement, the Approvals and, if applicable, the Staffing and Processing Agreement.

6.2.2 **Other Agency Approvals**. City shall cooperate with Developer, at Developer's expense, in Developer's endeavors to obtain such other permits and approvals, if any, as may be required from Other Agencies having jurisdiction over the Project as set forth in Section 9.4.

ARTICLE 7
DEFAULT, REMEDIES, TERMINATION

7.1 **Remedies for Breach**. City and Developer acknowledge that the purpose of this Agreement is to carry out the Parties' objectives and local, regional, and statewide objectives by developing the Project. The Parties acknowledge that City would not have entered into this 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 any actual, consequential,

punitive, or other monetary damages against City for breach of this Agreement. City and Developer agree that, in the event of a breach of this 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 Agreement. In addition to the foregoing remedies, City shall be entitled to recover monetary damages with respect to amounts payable by Developer to City under this Agreement, but in no event may City seek to recover any consequential or punitive damages. All of the above remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy.

7.2 **Notice of Breach**.

7.2.1 Prior to the initiation of any action for relief specified in Section 7.1 above because of an alleged breach of this Agreement, the Party claiming breach shall 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.

7.2.2 The breaching Party shall cure the breach within thirty (30) days following receipt of the Notice of Breach; provided, however, if the nature of the alleged breach is nonmonetary and such that it cannot reasonably be cured within said thirty (30) day period, then the commencement of the cure within such time period and the diligent prosecution to completion of the cure thereafter at the earliest practicable date shall be deemed to be a cure, provided that if the cure is not so diligently prosecuted to completion, then no additional cure period shall be required to be provided. If the alleged breach is cured within the time provided above, then no default shall exist, and the noticing Party shall take no further action to exercise any remedies available hereunder. If the alleged breach is not cured, then a default shall exist under this Agreement and the noticing Party may exercise any of the remedies available under this Agreement.

7.2.3 If, in the reasonable determination of the alleged breaching Party, such event does not constitute a breach of this Agreement, the Party to which the Notice of Breach is directed, within ten (10) Business Days following receipt of the Notice of Breach, shall deliver to the Party giving the Notice of Breach written notice (a "**Compliance Notice**") which sets forth with reasonable particularity the reasons that a breach has not occurred. Such Compliance Notice shall not lengthen the thirty (30) day cure period specified in Section 7.2.2. If the non-breaching Party does not agree with the Compliance Notice, then, within ten (10) Business Days following receipt of the Compliance Notice, the non-breaching Party shall notify the breaching Party that it still is considered in breach and the reason(s) why it is still considered in breach, and after expiration of the applicable cure period the non-breaching Party may exercise any of its available remedies.

7.3 **Breach or Default by One Party Comprising Developer**. If Developer has conveyed or transferred its interest in some but not all of the Property to a Transferee in accordance with Section 10.1 or a Mortgagee or Transferee has taken title to a portion of the Property through foreclosure or other action, so that more than one Party is responsible for the obligations of "Developer" under this Agreement, there shall be no cross-default between the separate Parties

that have Developer obligations. Accordingly, if one such Party is in breach or default, it shall not be a breach or default by any other Party that acts as Developer under this Agreement as to a different portion of the Property; provided, however, other Developer(s) may be affected by a Developer's breach or default based on (i) City's exercise of its termination rights as to the defaulting Developer; and (ii) City's right to withhold construction permits, certificates of occupancy and Subsequent Approvals from the breaching or defaulting Developer.

7.4 **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California without reference to its choice of laws rules.

ARTICLE 8
ANNUAL REVIEW, PERMITTED DELAYS, AND AMENDMENTS

8.1 **Annual Review**.

8.1.1 **Annual Review of Developer**. 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 following the Effective Date for compliance with the provisions hereof. Developer shall provide, in writing and with documentation, any evidence which the Community Development Director deems reasonably required from Developer in order to demonstrate Developer's compliance with the terms of this Agreement. The annual review must be submitted by Developer to the City on or before October 1st of each year following the Effective Date. Such annual review provision supplements, and does not replace, the provisions of Section 7.2 above whereby either City or Developer may, at any time, assert matters which either Party believes have not been undertaken in accordance with this Agreement by delivering a written Notice of Breach and following the procedures set forth in Section 7.2.3. Developer shall pay City's actual costs for its performance of the annual review, including staff time required to perform the annual review. Further details regarding payment of annual review costs may be set forth in a Staffing and Processing Agreement, if the Parties opt to enter into such agreement.

8.1.2 **Annual Review of Assignees**. If a Transferee or Mortgagee becomes the "Developer" subject to this Agreement as to a portion of the Property, annual review shall be conducted separately, but concurrently, with respect to each such Developer, and determinations as to compliance with this Agreement shall be made separately. If City takes action against one such Developer for noncompliance, such action shall apply only as to the Developer involved and the portions of the Property in which such Developer has an interest, and shall not affect other Developers unless they or their portions of the Property are involved in the noncompliance.

8.2 **Permitted Delays**.

8.2.1 **Force Majeure**. Subject to the limitations set forth below, the time within which either Party shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the extension of time, by any of the following events: (1) strikes, lockouts, stoppages, boycotts, and other labor difficulties; (2) acts of God; (3) unusually severe weather, but only to the extent that such weather

or its effects (including, without limitation, dry-out time) result in delays that cumulatively exceed twenty (20) days for any winter season occurring after Commencement of Construction; (4) failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body or by reason of an embargo or trade dispute where, in each case, Developer is unable to obtain alternative or replacement materials, within the same or substantially similar time period at substantially the same cost (and without having to forfeit any significant deposits or advance payments); (5) changes in local, State, or Federal laws or regulations; (6) any development moratorium or any action of Other Agencies that regulate land use, development, or the provision of services that prevents, prohibits, or delays construction of the Project; (7) enemy action; (8) civil disturbances; (9) wars; (10) terrorist acts; (11) fire or earthquake; (12) condemnation or unavoidable casualties; (13) mediation, arbitration, litigation, or other administrative or judicial proceeding involving the Approvals or this Agreement other than between City and Developer; (14) epidemics and other public health crises affecting the workforce by actions such as quarantine restrictions (excluding COVID-19 related restrictions occurring as of the Effective Date); or (15) Economic Recession (each a "**Force Majeure Event**"); provided, except as otherwise provided in Section 8.2.2 below, the Term shall not be extended by reason of any Force Majeure Delay. An extension of time for any such cause (each a "**Force Majeure Delay**") shall be for the period of delay caused by the Force Majeure Event and shall commence to run from the time of commencement of the Force Majeure Event, if written notice by the Party claiming such extension is sent to the other Party within sixty (60) days of commencement of the Force Majeure Event. If notice is sent after such sixty (60) day period, then the extension shall commence to run no sooner than sixty (60) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City Manager and Developer. Developer's inability or failure to obtain financing shall not be deemed to be a cause outside the reasonable control of the Developer and shall not be the basis for Force Majeure Delay unless such inability, failure, or delay is a direct result of an Economic Recession. "**Economic Recession**" means two consecutive quarters of negative GDP recession as defined and determined by the National Bureau of Economic Research during which the cumulative GDP decline is -3.0% or more.

8.2.2 **Extension of Term**. The Term may be extended by one or more Force Majeure Delays, up to a cumulative maximum of two (2) years. The extension(s) for Force Majeure Delays can either be applied to the Initial Term or Extended Term or a combination thereof, but in no event shall the Term exceed twenty two (22) years. Nothing herein shall be deemed to prevent the Parties from later agreeing, each in its sole and absolute discretion, to a further extension of the Term, but any such extension will be subject to processing as a Material Change in accordance with the Development Agreement Statute and Development Agreement Ordinance, as they may be amended from time to time.

8.3 **Certain Waivers.** City shall have the right, but not the obligation, 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 Developer of such portion, so long as: (a) the waiver, reduction, or revision does not conflict with the land uses or improvements that are the subject 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 Developer or property owner; (c) the waiver, reduction, or revision is not inconsistent with the purpose and goals of the General Plan or Precise

Plan; and (d) such waiver or reduction is made with the written consent of the Developer of the portion of the Project as to which such waiver or reduction is granted.

8.4 **Life Safety and Related Matters.** 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, environmental, energy or resource efficiency, mechanical, electrical, and/or building integrity requirements at the time permits for construction of such improvements are issued. This Section 8.4 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 City to deal with material endangerments to persons on or about the Property not adequately addressed in the Approvals.

8.5 **Modification Because of Conflict with State or Federal Laws.** In the event that local (non-City) State or Federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps, or permits approved by City, such modifications shall be governed by the provisions of Section 3.6.2 above. Any such amendment or suspension of this Agreement shall be approved by the City Council in accordance with the City Code and this Agreement and by Developer.

8.6 **Amendment by Mutual Consent.** This Agreement may be amended in writing from time to time by mutual consent of City and Developer, subject to approval by the City Council (except as otherwise provided in Section 8.8), and in accordance with the procedures of the Development Agreement Statute and the City's Development Agreement Ordinance.

8.7 **City Costs for Review.** During the Term of this Agreement, Developer shall promptly reimburse City for costs incurred by City to have its staff, consultant, or outside legal counsel review, approve, or issue assignments, estoppel certificates, transfers, amendments to this Agreement, and the like. Developer's reimbursement obligations may be more specifically set forth in a Staffing and Processing Agreement executed by the Parties. Developer's obligations under this Section 8.7 shall survive the expiration or earlier termination of this Agreement.

8.8 **Amendment of this Agreement**. This Agreement may be amended, refined or clarified from time to time, in whole or in part, by mutual written consent of the Parties, as follows:

8.8.1 **Non-Material Changes by Operating Memoranda**.

8.8.1.1 The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation between City and Developer, and, during the course of implementing this Agreement and developing the Project, refinements, clarifications, and non-Material Changes of this Agreement may become appropriate and desired with respect to the details of performance of City and Developer. If, and when, from time to time during the Term of this Agreement, City and Developer agree that such a refinement, clarification or other non-Material Change is necessary or appropriate, City and Developer shall effectuate such refinement, clarification or non-Material Change through a memorandum (the "**Operating Memorandum**") approved in writing by City and Developer, which, after execution, shall be attached hereto as an addendum and become a part hereof. Any Operating Memorandum may be further refined from

time to time as necessary with future approval by City and Developer. No Operating Memorandum shall constitute an amendment to this Agreement requiring public notice or hearing.

8.8.1.2 By way of illustration but not limitation of the above criteria for an Operating Memorandum, any refinement, clarification or other change of this Agreement which does not affect a Material Change shall be deemed suitable for an Operating Memorandum and shall not, except to the extent otherwise required by Applicable Law, require notice or public hearing before the Parties execute the Operating Memorandum; provided, that such Operating Memorandum shall first be approved by Developer and the Community Development Director; and provided further, that the Community Development Director in consultation with the City Attorney shall make the determination on behalf of City whether a requested refinement, clarification or other change may be effectuated pursuant to this Section 8.8.1 or whether the requested refinement, clarification or other change is of such a character to constitute an amendment hereof pursuant to Section 8.6 or 8.8.2. The Community Development Director shall be authorized to execute any Operating Memoranda hereunder on behalf of City. Minor modifications to the Project as to the location, operational design, or requirements for maintenance of improvements shall be suitable for treatment through Operating Memoranda subject to the provisions of this Section 8.8.1, and shall not be deemed a Material Change and shall not require a formal Agreement Amendment as provided in Section 8.8.2.

8.8.2 **Material Change by Agreement Amendments**. Any revision to this Agreement which involves a Material Change or is otherwise determined not to qualify for an Operating Memorandum as set forth in Section 8.8.1 shall require a formal "**Agreement Amendment,**" which will require submittal of a subsequent zoning permit application and review thereof in order to process the Agreement Amendment, and duly noticed public hearings before the Zoning Administrator and City Council in accordance with the City Code and the Development Agreement Statute. Approval of any Material Change to this Agreement shall require approval by both the City Council and Developer.

8.9 **Amendment of Approvals**. As provided in the Existing Approvals, any major modification to the Project or the Approvals proposed by Developer requires City Council approval whereas minor modifications do not require City Council approval. What constitutes a major or a minor modification to the Project or Approvals is set forth in the Conditions of Approval. Modifications of the Project or Approvals will not require an amendment of this Agreement unless the modification constitutes a Material Change. Any related amendment to this Agreement shall be limited to those Agreement provisions that are implicated by the applicable modification.

8.10 **Cancellation by Mutual Consent.** Except as otherwise permitted in this Agreement, this Agreement may be canceled in whole or in part only by the mutual consent of City and Developer or its successors-in-interest, in accordance with the provisions of the City Code. Except as otherwise set forth in this Agreement or under Applicable Law, any fees or monetary amounts paid by Developer to City pursuant to this Agreement prior to the date of cancellation shall be retained by City, and any sums then due and owing to City shall be paid as part of the cancellation.

ARTICLE 9
COOPERATION AND IMPLEMENTATION

9.1 **Cooperation**. It is the Parties' express intent to cooperate with one another and to diligently work to implement all land use, zoning and building approvals for development of the Project, including off-site and on-site public improvements, in accordance with the terms hereof. City will not use its discretionary authority in considering any application for a Subsequent Approval to change the policy decisions reflected by this Agreement and the Existing Approvals or otherwise to prevent development of the Project.

9.2 **Processing and Implementation**.

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

9.2.1.1 Scheduling all required public meetings and hearings in accordance with the City's regularly established meeting schedule for the reviewing bodies, which may include the Development Review Committee, Zoning Administrator and/or City Council;

9.2.1.2 Processing and reviewing all maps, plans, land use permits, building plans and specifications, and other plans relating to development of the Project filed by Developer or its nominees; and

9.2.1.3 Due diligence in confirming environmental compliance with CEQA, including review of any supplemental or subsequent studies or information.

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

9.3 **Staffing and Processing Agreement.** If the Parties enter into a Staffing and Processing Agreement for the Project, then the Staffing and Processing Agreement shall control in the event of any conflict between the general staffing and processing procedures set forth in this Agreement and whatever more specific staffing and processing procedures may be set forth in the Staffing and Processing Agreement.

9.4 **Other Agency Approvals.** Developer shall apply prior to expiration of the Term of this Agreement for Other Agency Approvals which may be required from Other Agencies having jurisdiction over the Project or Property as may be required for development of, or provision of services to, the Project. City shall cooperate reasonably with Developer in its endeavors to obtain such Other Agency Approvals at no cost to City. Developer acknowledges that if, pursuant to Applicable Law, such cooperation by City requires approval by the City

Council, that approval cannot be predetermined because decisions are made by a majority vote of the City Council.

ARTICLE 10
TRANSFERS AND ASSIGNMENTS

10.1 **Transfers and Assignments**. Developer shall have the right to convey, assign, or transfer all of its right, title and interest in and to all or any part of the Property (a "**Transfer**") with the express written consent of City, not to be unreasonably withheld, conditioned or delayed, provided Developer also transfers to such party (the "**Transferee**") all of Developer's interest, rights, or obligations under this Agreement with respect to the portion of the Property that is the subject of the Transfer (the "**Transferred Property**"). Because a Phase may contain different product types, the Parties agree there may be more than one Developer in each Phase. As set forth in Section 10.2, Developer and the Transferee shall make clear in the Assignment and Assumption Agreement which party(ies) are assuming responsibility for (i) completion of the public improvements, park improvements and POPA Open Space improvements in that Phase and (ii) satisfaction of the payment and other obligations applicable to that Phase. Notwithstanding the foregoing, Developer may Transfer this Agreement, without City's consent, upon delivery to City of an Assignment and Assumption Agreement and satisfaction of the other requirements in this Article 10, to (a) an Affiliated Party, (b) Lendlease, and (c) any Lendlease Affiliate. In the case of a Transfer to an Affiliated Party, Lendlease or any Lendlease Affiliate, Developer shall provide verifiable documentation that the affiliated Transferee qualifies as an Affiliated Party or constitutes Lendlease or a Lendlease Affiliate, with such documentation in each case to be sufficient and acceptable in City's reasonable discretion, and such Transfer shall not occur without City's written confirmation of such qualification, which City shall provide within ten (10) Business Days after receipt of adequate supporting documentation. The Parties acknowledge that the following constitute and are qualified as Affiliated Parties of Developer: (i) Alphabet, Inc., the parent company of Google LLC; (ii) any Affiliated Party of Alphabet, Inc.; and (iii) any entity resulting from the merger or acquisition of Alphabet, Inc. or Google LLC, or division of Alphabet, Inc. or Google LLC, or by operation of law or by order of a court of competent jurisdiction. City acknowledges that Developer currently intends to Transfer the Project's residential parcels to Lendlease Affiliates.

10.1.1 **Non-Transfers**. Subject to the terms and conditions of this Section 10.1.1, the following shall not be considered a "Transfer" and shall not require the City's consent: (i) leases, subleases, licenses, easements, or other occupancy agreements; financing transactions, such as sale-leaseback or grant of a mortgage or deed of trust, for purposes of financing development of the Project; or any foreclosure thereof or deed-in-lieu with respect thereto; (ii) any change, directly or indirectly, of the equity or ownership interests of Developer or any Transferee which individually or cumulatively with prior changes does not result in a change in Control of Developer or Transferee; and (iii) any transfer of land or improvements to the City or the City's designee or to non-profits approved by City in satisfaction of obligations under this Agreement or the Approvals. With respect to clause (ii) above, if Developer or a Transferee is a publicly traded company, then a sale or transfer of shares in such company shall not be deemed a change in Control of Developer or such Transferee. Notwithstanding the foregoing provisions of this Section 10.1.1 but subject to Article 11 below, if any such transaction includes the transfer of rights and obligations under this Agreement and results in the transferee having a legal or equitable interest

in the Property or a portion thereof, then Developer and the transferee shall enter into an Assignment and Assumption Agreement as described herein above, provide a copy of such agreement to the City, and such transaction described in this Section 10.1.1 shall be treated as a "Transfer" under this Agreement and the transferee with respect thereto be a treated as a "Transferee".

10.2 **Notice of Transfer; Assignment and Assumption Agreement**. Developer shall provide not less than thirty (30) days' notice to the City before any proposed Transfer of its interests, rights, and obligations under this Agreement, together with a copy of the assignment and assumption agreement for the applicable parcel or parcels ("**Assignment and Assumption Agreement**"); if the Transfer requires City's consent under the terms of this Agreement, City shall grant or withhold its consent in accordance with this Article 10 no later than thirty (30) days after receipt of Developer's notice and supporting documentation deemed adequate by City in its reasonable discretion. The parties to an Assignment and Assumption Agreement shall use Good Faith Efforts to coordinate with City (including City's attendance at meetings) to address in detail whether and how each obligation and right set forth in this Agreement shall be divided, allocated, assigned or otherwise Transferred, in whole or in part, between Developer and a Transferee so as to avoid later confusion regarding what obligations and rights have and have not been Transferred. Developer shall reimburse City for City's costs of coordination with the Developer and each potential Transferee, whether or not the coordination results in a Transfer. Where a transfer of a portion of the Property has been completed, Developer and said Transferee shall be jointly and severally liable and obligated to City to fulfill any duty or obligation under this Agreement (and under the other Approvals) where Developer and a Transferee do not agree as to which party is responsible (between Developer or a Transferee) for fulfilling or performing a duty or obligation under an Assignment and Assumption Agreement. Where a Transfer of a portion of the Property has been completed but City has not received an Assignment and Assumption Agreement that transfers a particular duty or obligation under this Agreement or under the other Approvals in question, then, notwithstanding the foregoing, City shall have the right to look to Developer (i.e., the assignor), and such Developer shall remain liable and obligated to City to fulfill those duties or obligations under this Agreement. The Assignment and Assumption Agreement shall be in recordable form, in substantially the form attached as **Exhibit L** (including the indemnifications, the agreement and covenant not to challenge the enforceability of this Agreement, and not to sue the City for disputes between Developer and any Transferee) and any material changes to the attached form will be subject to the review and approval of the City Manager and City Attorney, not to be unreasonably withheld, conditioned or delayed. City shall administer the provisions of Section 10.1 and this Section 10.2 through the City Manager; provided, however that nothing shall preclude the City Manager from requesting the City Council's consent to any transfer that requires City's consent as expressly set forth in this Agreement.

10.3 **Release of Liability**. Except as otherwise provided in Section 10.2 above, upon recordation of any Assignment and Assumption Agreement (following the City's approval of any material changes thereto), the assignor shall be released from any prospective liability or obligation under this Agreement related to the Transferred Property, except for obligations retained by the assignor as specified in the Assignment and Assumption Agreement, and the assignee/Transferee shall be deemed to be "Developer" under this Agreement with all rights and obligations related thereto with respect to the Transferred Property. If a Transferee Defaults under this Agreement, such default shall not constitute a Default by the assignor Developer or any other Transferee with

respect to any other portion of the Property and shall not entitle the City to terminate or modify this Agreement with respect to such other portion of the Property.

10.4 **Responsibility for Performance**. City is entitled to enforce each and every such obligation assumed by each Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert as a defense against the City's enforcement of performance of such obligation that such obligation (i) is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the Transfer or the Assignment and Assumption Agreement or any other agreement or transaction between Developer and the Transferee, including any obligation retained by Developer to provide land for Affordable Housing Sites or parks within the applicable Phase, or (ii) relates to the period before the Transfer. The foregoing notwithstanding, the Parties acknowledge and agree that a failure to Complete a Mitigation Measure, comply with the BMR Alternative Mitigation for affordable housing, provide land for Parks or construct POPA Open Space may, if not Completed, delay or prevent another Transferee or Developer Party's ability to start or Complete a specific Building or improvement under this Agreement if and to the extent the Completion of the Mitigation Measure, the affordable housing, or Completion of the Parks and POPA Open Spaces is a condition to the other Party's right to proceed, as specifically described in the Mitigation Measure, the Approvals, the Affordable Housing Plan and/or Phasing Plan, and Developer and all Transferees assume this risk.

10.5 **Constructive Notice**. For so long as this Development Agreement is in effect (i) every person or entity who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Property is, and shall be, constructively deemed to have consented to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property, and (ii) every person or entity who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Property and undertakes any development activities at the Property, is, and shall be, constructively deemed to have consented and agreed to, and is obligated by all of the terms and conditions of this Agreement (as such terms and conditions apply to the Property or applicable portion thereof), whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

10.6 **Covenants Run with the Land.** For so long as this Development Agreement is in effect (i) 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 (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, including foreclosure or deed in lieu of foreclosure, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation, or otherwise), and assigns; (ii) all of the provisions of this 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; and (iii) 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.

10.7 **Notice of Completion, Revocation or Termination**. Upon any early revocation or termination of this Agreement (as to all or any part of the Property or Project) under the circumstances and in the manner permitted herein, the Parties agree to execute, if requested in writing by the other Party, a written statement acknowledging such revocation or termination in the form attached as **Exhibit P**, signed by the appropriate agents of the City and Developer, and record such instrument in the Official Records. In addition, Developer shall have the right to terminate this Agreement (i) with respect to each Completed building(s) and the legal parcel on which such building(s) is located when one or more of the Project's buildings have received its or their Certificate of Occupancy and (ii) with respect to portions of the Property on which improvements other than buildings are to be constructed, and which constitute a separate legal parcel, when such improvements have been Completed and, if applicable, have received a Certificate of Occupancy, and, with respect to each of (i) and (ii), all of the Required Exactions, Community Benefits and Public Benefits, and any other obligations and requirements tied to the specific building(s) or legal parcel have been provided or otherwise satisfied, in accordance with this Agreement (and provided that any and all ongoing Developer or owner obligations, including but not limited to any Community Benefit and Public Benefit obligations, shall survive such termination and remain in full force and effect as required by the Approvals or this Agreement), by submitting a completed Notice of Completion to the City that demonstrates the foregoing, as set forth in the checklist attached to such notice, and which identifies the Community Benefit, Public Benefit and other obligations, if any, that are ongoing and shall remain in full force and effect. Following any early revocation or termination of this Agreement, including a termination following Completion as set forth in this Section 10.7, the restrictions on Transfers shall no longer apply to the portion of the Project as to which this Agreement has been revoked or terminated. The completed checklist shall be consistent with (a) Developer's obligations under the Approvals, this Agreement, and the Subsequent Approvals for such building(s) or legal parcel(s), and (b) any written summary of such obligations that Developer submitted in connection with the most-recent annual review, if any, of such buildings or legal parcel pursuant to Section 8.1 of this Agreement. Subject to the foregoing and upon Developer's request, City and Developer shall execute and record a Notice of Completion and Termination substantially in the form attached as **Exhibit P** for the applicable property on which the buildings are located or for the applicable legal parcel on which other improvements or facilities have been constructed.

ARTICLE 11
MORTGAGE PROTECTION; CERTAIN RIGHTS OF CURE

11.1 **Mortgage Protection**. This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording this 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 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.

11.2 **Mortgagee Not Obligated**. Notwithstanding the provisions of Section 11.1 above, no Mortgagee shall have any obligation or duty under this 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 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 Agreement or otherwise under the Approvals.

11.3 **Notice of Default to Mortgagee**. If City receives a notice from a Mortgagee requesting a copy of any notice of default given to 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 Breach given to Developer with respect to any claim by City that Developer has committed an event of default, and, if City makes a determination of noncompliance hereunder, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereon on Developer. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City's Notice of Breach, plus additional time not to exceed one hundred fifty (150) days, as reasonably determined by the Community Development Director, to allow Mortgagee sufficient time to make the election to cure and thereafter prosecute such cure to completion. If a Mortgagee shall be required to obtain title or possession in order to cure any default or breach, then the time to cure shall be tolled so long as the Mortgagee is diligently attempting to obtain possession, including by appointment of a receiver or foreclosure, and provides City upon written request from time to time reasonable evidence of such diligent efforts; provided the tolling shall not exceed 180 days or such longer period as City may agree in its sole discretion. A delay or failure by the City to provide such notice required by this Section shall extend, for the number of days until notice is given, the time allowed to the Mortgagee for cure, but shall not extend Developer's time to cure.

ARTICLE 12
GENERAL PROVISIONS

12.1 **Project is a Private Undertaking.** It is specifically understood and agreed by the parties that the development contemplated by this Agreement is a private development, that City has no interest in or responsibility for or duty to third persons concerning any of said improvements, and that Developer shall have full power over and exclusive control of the Property herein described subject only to the limitations and obligations of Developer under this Agreement.

12.2 **Notices, Demands, and Communications between the Parties.** Whenever this Agreement requires or provides for a notice to be given, regardless of whether this Agreement describes such notice as "written notice", such notice shall be given in writing in accordance with this Section 12.2, unless this Agreement expressly provides for another form or manner of notice with respect to the particular notice. Formal written notices, demands, correspondence, and communications between City and Developer will be sufficiently given if dispatched by first-class mail, postage prepaid, or overnight courier, to the offices of the City and Developer 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 or courier as provided in this Section:

City:	City Manager's Office—City of Mountain View Attn: City Manager 500 Castro Street P.O. Box 7540 Mountain View, CA 94039-7540
With a copy to:	City Attorney's Office Attn: City Attorney City of Mountain View 500 Castro Street P.O. Box 7540 Mountain View, CA 94039-7540
And to:	Community Development Department Attn: Community Development Director City of Mountain View 500 Castro Street P.O. Box 7540 Mountain View, CA 94039-7540
Developer:	Google LLC Attn: DevCo Middlefield Park Team Mountain View Real Estate Team 1600 Amphitheatre Parkway Mountain View, CA 94043
With a copy to:	Google LLC Attn: Legal Department/Real Estate Matters 1600 Amphitheatre Parkway Mountain View, CA 94043

Notices delivered by deposit in the United States mail as provided above shall be deemed to have been served two (2) Business Days after the date of deposit or if sent via overnight courier on the next Business Day.

12.3 **No Joint Venture or Partnership.** Nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making City and Developer joint venturers or partners.

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

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

12.6 **Entire Agreement.** This Agreement, including the Recitals and the exhibits attached to this Agreement, each of which is incorporated herein by reference, constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof. The exhibits are listed in the Agreement Table of Contents.

12.7 **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 orally or in writing, and, if so amended, identifying the amendments; (c) the requesting Party is not subject to an uncured breach or in default in the performance of its obligations under this Agreement, or if in breach or default, to describe therein the nature and amount of any such breaches or defaults; and (d) any other matter reasonably requested by the requesting Party, including the findings of the City with respect to the most recent annual review performed pursuant to Section 8.1 of this Agreement. The requesting Party shall be responsible for all reasonable costs incurred by the Party from whom such certification is requested and shall reimburse such costs within thirty (30) days of receiving the certifying Party's request for reimbursement. 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 City shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by Transferees, Mortgagees and investors in Developer.

12.8 **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 City and Developer to hereby acknowledge and provide for the right of Developer to develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment, subject to the terms of this Agreement (including without limitation phasing and timing requirements specified for Required Exactions, Community Benefits, Public Benefits and public improvements). City acknowledges that such a right is consistent with the intent, purpose, and understanding of the Parties to this Agreement, and that without such a right, Developer's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Statute and this Agreement.

12.9 **Indemnification and Hold Harmless.** Developer shall indemnify, defend (with counsel reasonably acceptable to City), and hold harmless City and its elected and appointed officials, boards, commissions, officers, employees, contractors, agents, and representatives (individually, a "**City Party**" and, collectively, "**City Parties**") from and against any and all third party liabilities, obligations, orders, claims, damages, fines, penalties and expenses, including attorneys' fees and costs (collectively, "**Claims**"), including Claims for any bodily injury, death, or property damage, arising during the Term, directly or indirectly from the development,

construction, or operation of the Project and, if applicable, from failure to comply with the terms of this Agreement, and/or from any other acts, omissions, negligence or willful misconduct of Developer or any of Developer's employees, partners, members, shareholders, contractors, subcontractors, agents or representatives (individually a "**Developer Party**" and collectively, "**Developer Parties**") under this Agreement; provided that (i) Developer's indemnity and hold harmless obligations in this Section 12.9 shall also include reasonable first party attorneys' fees and costs that may be incurred by City Parties in the defense of any third party Claims, and (ii) Developer's obligations in this Section 12.9 to indemnify and hold harmless the City Parties (but not Developer's duty to defend the City Parties) shall be limited (and shall not apply) to the extent such Claims are found to arise from the gross negligence or willful misconduct of a City Party. This Section 12.9 includes any and all present and future Claims arising out of or in any way connected with Developer's or its contractors' or subcontractor's obligations to comply with the requirements of the Prevailing Wage Laws, including any and all Claims that may be asserted by contractors, subcontractors, or other third-party claimants pursuant to California Labor Code Sections 1726 and 1781. Developer's obligations under this Section 12.9 with respect to any Claims accruing during the Term of this Agreement shall survive expiration or earlier termination of this Agreement.

12.10 **Defense and Cooperation in the Event of a Litigation Challenge**.

12.10.1 **Cooperation**. City and Developer shall cooperate in the defense of any claim, action, or court proceeding instituted by a third party or other governmental entity or official seeking to attack, set aside, void, annul, or otherwise challenge City's review, processing, consideration and/or approval of this Agreement, the Approvals, or any related decision, including the processing or adoption of any environmental documents or determinations under CEQA, which relate to the Approvals, or challenging the validity of any provision of this Agreement or the Approvals ("**Litigation Challenge**"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information. Developer shall take the lead role defending such Litigation Challenge and may elect to be represented by the legal counsel of its choice, with the costs of such representation, including Developer's administrative, legal, and court costs, paid solely by Developer. City may elect to retain separate counsel to monitor Developer's defense of the Litigation Challenge at Developer's expense. City shall have the right to approve all significant decisions concerning the manner in which defense of the Litigation Challenge is conducted, and to approve any and all settlements, all such approvals not to be unreasonably withheld, conditioned or delayed. Per Government Code Section 66474.9, City shall promptly notify Developer of any proceeding thereunder. The Parties shall affirmatively cooperate in defending the Litigation Challenge and shall execute a joint defense and confidentiality agreement in order to share and protect information under the joint defense privilege recognized under Applicable Law.

12.10.2 **Indemnification**. Developer shall indemnify, defend, and hold harmless City Parties from any and all Claims, including cost awards and attorneys' fees awarded under Code of Civil Procedure Section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation, and any costs, expenses, reasonable attorneys' fees, or expert witness fees that may be asserted or incurred by the City Parties, arising out of or in connection with a Litigation Challenge. Any proposed settlement of a Litigation Challenge shall be subject to City's and Developer's approval not to be unreasonably withheld, conditioned, or delayed. The

City Attorney is hereby authorized to approve settlements on City's behalf; provided, however, if the terms of the proposed settlement would constitute an amendment or modification of this Agreement or any Approvals, then the settlement shall not become effective unless such amendment or modification is approved by City and Developer in accordance with Applicable Law, and City reserves its full legislative discretion with respect to any such City approval. If Developer elects not to contest or defend such Litigation Challenge, City shall have no obligation to do so, but Developer shall be liable for any costs or awards that may arise from resolving the Litigation Challenge in favor of the party bringing the Litigation Challenge, including, but not limited to, reasonable costs the City incurs to void approval of this Agreement or the Approvals or take other action as resolution of the Litigation Challenge may direct. Developer shall reimburse City for its reasonable costs incurred in connection with the Litigation Challenge within thirty (30) days following City's written demand therefor, which may be made from time to time during the course of such litigation. Developer's obligations under this Section 12.10 shall survive expiration or earlier termination of this Agreement and shall remain in full force and effect throughout all stages of litigation, including appeals of any lower court judgements.

12.11 **Public Records Act Requests**. Developer shall promptly reimburse City for all costs and fees associated with City's response to Public Records Act requests related to this Agreement, the Project Approvals, the Property and the Project. City will confer with Developer prior to responding to any Public Records Act requests; provided, City will have full control and authority over its response. Notwithstanding the foregoing, to the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Public Records Act and other Applicable Laws, Developer shall mark any such materials as such. When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines, in its reasonable discretion, that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure. If Developer fails to timely seek or obtain such a court order, the City may thereafter release the information, in which case City shall have no liability to Developer or any other person with respect to such release.

12.12 **Recordation.** Promptly after the Effective Date of this Agreement, the City Clerk shall have this Agreement recorded in the Official Records. If the Parties to this Agreement or their successors in interest amend or cancel this Agreement or if City terminates or modifies this Agreement as hereinabove provided, the City Clerk shall record such amendment, cancellation, or termination instrument in the Official Records.

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

12.14 **City Representations and Warranties.** City represents and warrants to Developer that, as of the Effective Date:

12.14.1 City is a California charter city and municipal corporation and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

12.14.2 The execution and delivery of this Agreement and the performance of the obligations of City hereunder have been duly authorized by all necessary City Council action, and all necessary City approvals have been obtained.

12.14.3 This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

During the Term of this Agreement, City shall, upon learning of any fact or condition which would cause of any of the warranties and representations in this Section 12.14 not to be true, immediately give written notice of such fact or condition to Developer.

12.15 **Developer Representations and Warranties.** Developer represents and warrants to City that, as of the Effective Date:

12.15.1 Developer is duly organized and validly existing under the laws of the State of Delaware, and is in good standing, and has all necessary powers under the laws of the State of California to own property interests and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

12.15.2 The execution and delivery of this Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary corporate action and all necessary corporate authorizations have been obtained.

12.15.3 This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

12.15.4 Developer has not: (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Developer's creditors; (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Developer's assets; (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Developer's assets; or (v) admitted in writing its inability to pay its debts as they come due.

During the Term of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 12.15 not to be true, immediately give written notice of such fact or condition to City.

12.16 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.17 **Waivers.** Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights or remedies under this Agreement shall not operate as a waiver of any such rights or remedies or deprive any such Party of its right to institute and

maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by the other Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act or failure to act by the other Party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts or failures to act in the future.

12.18 **Time is of the Essence.** Time is of the essence of this Agreement and of each and every term and condition hereof. All references to time in this Agreement shall refer to the time in effect in the State of California.

12.19 **Venue.** Any legal action regarding this Agreement shall be brought in the Superior Court for Santa Clara County, California, except for actions that include claims in which the Federal District Court for the Northern District of the State of California has original jurisdiction, in which case the Northern District of the State of California shall be the proper venue.

12.20 **Surviving Provisions.** In the event this Agreement is terminated, neither Party shall have any further rights or obligations hereunder, except for those obligations of Developer which by their terms survive expiration or termination hereof, including, but not limited to, those obligations set forth in Sections 2.3, 3.7, 5.2.4.2, 8.7, 12.9, and 12.10, and in **Exhibit H** (Ellis POPA Open Space Terms), **Exhibit J** (Small Business Diversification and Non-Profit Inclusion Program), and **Exhibit K** (Shared Parking Use Agreement Terms).

12.21 **Construction of Agreement.** All Parties have been represented by counsel in the preparation and negotiation of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. Unless the context clearly requires otherwise: (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; (e) "includes" and "including" are not limiting; and (f) "days" means calendar days unless specifically provided otherwise.

[*Signatures on following page*]

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

"City":

CITY OF MOUNTAIN VIEW,
a California charter city and municipal corporation

By: _____
Kimbra McCarthy
City Manager

Attest: _____
Heather Glaser
City Clerk

"Developer":

GOOGLE, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

_____
Taxpayer I.D. Number

APPROVED AS TO CONTENT:

_____
Name: Aarti Shrivastava
Assistant City Manager/Community Development Director

FINANCIAL APPROVAL:

_____
Name: Jessie Takahashi
Finance and Administrative Services Director

APPROVED AS TO FORM:

_____
Name: Jennifer Logue
City Attorney

INSERT NOTARY ACKNOWLEDGMENT FORMS

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

Real property in the City of Mountain View, County of Santa Clara, State of California, described as follows:

Description begins on next page.

PARCEL 1:

A PORTION OF LOT 2, AS SHOWN ON THAT CERTAIN MAP ENTITLED TRACT NO. 2917, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON IN BOOK 138 OF MAPS PAGE(S) 24 AND 25, DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIPE AT THE MOST NORTHERLY CORNER OF SAID LOT 2; THENCE ALONG THE NORTHEASTERLY LINE OF SAID LOT 2, SOUTH 74° 44’ 30" EAST 310.05 FEET TO AN IRON PIPE AT THE MOST EASTERLY CORNER OF SAID LOT 2 IN THE NORTHWESTERLY LINE OF LOGUE AVENUE; THENCE ALONG SAID NORTHWESTERLY LINE OF LOGUE AVENUE, SOUTH 16° 17’ WEST 181.07 FEET TO AN IRON PIPE; THENCE NORTH 73° 43’ WEST 310.00 FEET TO AN IRON PIPE IN THE NORTHWESTERLY LINE OF SAID LOT 2; THENCE ALONG SAID NORTHWESTERLY LINE OF LOT 2, NORTH 16° 17’ EAST 175.52 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

PARCEL 1 AS SHOWN ON LOT LINE ADJUSTMENT, AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 17, 1997 AS INSTRUMENT NO. 13979681, OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL "C" AND PORTIONS OF PARCELS "A" & "B", AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON FEBRUARY 06, 1968 IN BOOK 233 OF MAPS, AT PAGE 7, SANTA CLARA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTHERLY LINE OF MIDDLEFIELD ROAD AT THE SOUTHEASTERLY CORNER OF SAID PARCEL "C"; THENCE NORTH 16° 18’ 00" EAST 780.32 FEET ALONG THE EASTERLY LINE OF SAID PARCELS "C" AND "A"; THENCE NORTH 73° 42’ 00" WEST 281.50 FEET; THENCE SOUTH 16° 18’ 00" WEST 122.16 FEET; THENCE NORTH 73° 42’ 00" WEST 129.19 FEET TO THE WESTERLY LINE OF SAID PARCEL "B", SAID POINT BRING ON THE EASTERLY LINE OF ELLIS STREET; THENCE SOUTHERLY AND EASTERLY ALONG SAID WESTERLY LINE OF PARCEL "B" AND THE SOUTHERLY LINES OF PARCELS "B" AND "C" THE FOLLOWING FOUR COURSES:
(1) SOUTH 16° 18’ 00" WEST 248.56 FEET;
(2) ALONG A CURVE TO THE RIGHT, CONCAVE WESTERLY WITH A RADIUS OF 1540.00 FEET THROUGH A CENTRAL ANGLE OF 8° 45’ 05" FOR AN ARC LENGTH OF 235.22 FEET;
(3) ALONG A REVERSE CURVE TO THE LEFT, CONCAVE NORTHEASTERLY, WITH A RADIUS OF 30.00 FEET THROUGH A CENTRAL ANGLE OF 87° 27’ 39" FOR AN ARC LENGTH OF 45.79 FEET;
(4) ALONG A REVERSE CURVE TO THE RIGHT, CONCAVE SOUTHERLY, WITH A RADIUS OF 1550.00 FEET THROUGH A CENTRAL ANGLE OF 15° 54’ 06" FOR AN ARC LENGTH OF 430.18 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

PARCEL 2 AS SHOWN ON LOT LINE ADJUSTMENT, AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 17, 1997 AS INSTRUMENT NO. 13979681, OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF THAT CERTAIN PARCEL OF LAND GRANTED TO DELUCCHI ASSOCIATES, RECORDED JUNE 04, 1965 IN BOOK 6982 OF OFFICIAL RECORDS, PAGE 215 AND PORTIONS OF PARCELS "A" AND "B" AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON FEBRUARY 06, 1968 IN BOOK 233 OF MAPS, AT PAGE 7, SANTA CLARA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTHERLY LINE OF MIDDLEFIELD ROAD AT THE SOUTHEASTERLY CORNER OF SAID PARCEL "C", THENCE NORTH 16° 18’ 00" EAST 780.32 FEET ALONG THE EASTERLY LINE OF SAID PARCELS "C" AND "A" TO THE TRUE POINT OF BEGINNING; THENCE NORTH 73° 42’ 00" WEST 281.50 FEET; THENCE SOUTH 16° 18’ 00" WEST 122.16 FEET; THENCE NORTH 73° 42’ 00" WEST 129.19 FEET TO THE WESTERLY LINE OF SAID PARCEL "B", SAID POINT BRING ON THE EASTERLY LINE OF ELLIS STREET; THENCE NORTHERLY ALONG SAID EASTERLY LINE OF ELLIS STREET THE FOLLOWING FIVE COURSES:
(1) NORTH 16° 18’ 00" EAST 113.59 FEET;
(2) SOUTH 73° 42’ 00" EAST 5.00 FEET;
(3) NORTH 16° 18’ 00" EAST 245.00 FEET;
(4) NORTH 73° 42’ 00" WEST 5.00 FEET;
(5) NORTH 16° 18’ 00" EAST 215.00 FEET TO THE NORTHERLY LINE OF SAID DELUCCHI PARCEL;
THENCE SOUTH 73° 42’ 00" EAST 410.69 FEET ALONG SAID NORTHERLY LINE; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID DELUCCHI PARCEL AND THE EASTERLY LINE OF SAID PARCEL "A" SOUTH 16° 18’ 00" WEST 451.43 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 4:

ALL OF PARCEL B, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP IN LOTS 5 AND 6 OF TRACT NO. 3813", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON APRIL 15, 1966, IN BOOK 208 OF MAPS, AT PAGE 15.

PARCEL 5:

ALL OF PARCEL B AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP BEING ALL OF LOT 4 OF TRACT NO. 3813", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON FEBRUARY 18, 1969, IN BOOK 249, OF MAPS, AT PAGE 2.

PARCEL 6:

ALL OF PARCEL A AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP BEING ALL OF LOT 4 OF TRACT NO. 3813", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON FEBRUARY 18, 1969, IN BOOK 249, MAPS, AT PAGE 2.

PARCEL 7:

PORTION OF LOT 6A, AS SHOWN UPON THAT CERTAIN MAP ENTITLED MAP OF THE PARTITION OF THAT PART OF THE RANCHO PASTORIA DE LAS BORREGAS PATENTED TO MARTIN MURPHY JR., WHICH MAP WAS RECORDED APRIL 29, 1893 IN BOOK G PAGES 74 AND 75 OF MAPS, RECORDS OF SANTA CLARA COUNTY CALIFORNIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHEASTERLY LINE OF THE LAND CONVEYED TO KATHLEEN TAYLOR BY DEED RECORDED OCTOBER 25, 1937 IN BOOK 842 PAGE 566 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY WITH THE NORTHWESTERLY LINE OF LOGUE AVENUE; THENCE NORTH 16° 15’ 53" EAST ALONG THE NORTHWESTERLY LINE OF LOGUE AVENUE AS ESTABLISHED BY DEED TO THE CITY OF MOUNTAIN VIEW BY DEED RECORDED MARCH 25, 1970 IN BOOK 8869 PAGE 205 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY, A DISTANCE OF 1.25 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 40.00 FEET; THENCE NORTHERLY ALONG LAST MENTIONED CURVE THROUGH A CENTRAL ANGLE OF 41° 24’ 35" AN ARC DISTANCE OF 28.91 FEET TO THE BEGINNING OF A REVERSE CURVE HAVING A RADIUS OF 60.00 FEET; THENCE NORTHERLY, NORTHEASTERLY, EASTERLY, SOUTHEASTERLY, SOUTHERLY AND SOUTHWESTERLY ALONG LAST MENTIONED CURVE THROUGH A CENTRAL ANGLE OF 262° 49’ 10" AN ARC DISTANCE OF 275.22 FEET TO THE BEGINNING OF A REVERSE CURVE HAVING A RADIUS OF 40.00 FEET; THENCE SOUTHWESTERLY AND SOUTHERLY ALONG LAST MENTIONED CURVE THROUGH A CENTRAL ANGLE OF 41° 24’ 35" AN ARC DISTANCE OF 28.91 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF SAID LAND CONVEYED TO KATHLEEN TAYLOR; THENCE SOUTH 74° 44’ 30" EAST ALONG LAST MENTIONED SOUTHWESTERLY LINE, AND THE SOUTHWESTERLY LINE OF THE LAND CONVEYED TO MARIE R. LOGUE BY DEED RECORDED OCTOBER 25, 1937 IN BOOK 849, PAGE 218 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY A DISTANCE OF 744.44 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 335.00 FEET AND A POINT IN THE WESTERLY LINE OF CLYDE AVENUE AS ESTABLISHED BY DEED TO THE CITY OF MOUNTAIN VIEW, BY DEED RECORDED MARCH 25, 1970 IN BOOK 8869, PAGE 201 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE NORTHERLY ALONG LAST MENTIONED CURVE AND WESTERLY LINE FROM A RADIAL THAT BEARS NORTH 78° 43’ 32" EAST THROUGH A CENTRAL ANGLE OF 26° 25’ 28" AN ARC DISTANCE OF 154.50 FEET; THENCE NORTH 15° 09’ 00" EAST ALONG THE WESTERLY LINE OF SAID CLYDE AVENUE, A DISTANCE OF 240.25 FEET TO A POINT IN THE SOUTHERLY LINE OF LAND CONVEYED TO THE CITY AND COUNTY OF SAN FRANCISCO BY DEED

RECORDED MARCH 5, 1951 IN BOOK 2163, PAGE 530 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE NORTH 77° 19’ 30" WEST ALONG LAST MENTIONED SOUTHERLY LINE, A DISTANCE OF 1083.97 FEET TO A POINT OF INTERSECTION THEREOF WITH THE SOUTHEASTERLY LINE OF THE LAND CONVEYED TO THE SOUTHERN PACIFIC RAILROAD COMPANY BY DEED RECORDED OCTOBER 9, 1931 IN BOOK 587 PAGE 222 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY; THENCE SOUTH 16° 15’ 00" WEST ALONG THE SOUTHEASTERLY LINE OF SAID LAND CONVEYED TO THE SOUTHERN PACIFIC RAILROAD COMPANY, A DISTANCE OF 340.46 FEET TO THE MOST WESTERLY CORNER OF SAID LAND CONVEYED TO KATHLEEN TAYLOR; THENCE SOUTH 74° 44’ 30" EAST ALONG THE SOUTHWESTERLY LINE OF SAID LAND CONVEYED TO KATHLEEN TAYLOR, A DISTANCE OF 310.05 FEET TO THE POINT OF BEGINNING, AND BEING SHOWN UPON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD ON SEPTEMBER 10, 1971 IN BOOK 289 PAGE 36 OF MAPS, SANTA CLARA COUNTY RECORDS.

PARCEL 8:

PARCEL 2, AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON FEBRUARY 3, 1984, IN BOOK 524 OF MAPS PAGE(S) 27.

PARCEL 9:

ALL OF PARCELS C AND D, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP IN LOTS 1 AND 2 OF TRACT NO. 3813", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON APRIL 15, 1966 IN BOOK 208 OF MAPS, AT PAGE 14.

PARCEL 10:

PARCEL A AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD AUGUST 17 1987 IN BOOK 577 OF MAPS, PAGE 29, RECORDS OF SANTA CLARA COUNTY.

PARCEL 11:

PARCEL 1 AS SHOWN ON THAT CERTAIN PARCEL MAP FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON FEBRUARY 3, 1984, IN BOOK 524 OF MAPS, PAGE 27.

PARCEL 12: ***[PARCEL 12 OMITTED – NOT PART OF PROJECT.]***

PARCEL 13:

A PORTION OF LOT 6A, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "MAP OF THE PARTITION OF PART OF THE RANCHO PASTORIA DE LAS BORREGAS PATENTED TO MARTIN MURPHY, JR.", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, IN BOOK "G" OF MAPS, PAGES 74 AND 75, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED OF JOSEPH EASTWOOD, JR., RECORDED IN BOOK 275 OF OFFICIAL RECORDS, PAGE 233, SANTA CLARA COUNTY RECORDS, DISTANT THEREON SOUTH 50°32'40" EAST 1044.33 FEET FROM THE SOUTHWESTERLY CORNER OF THAT CERTAIN 101.56 ACRE TRACT DESCRIBED IN DEED TO CATHERINE LOGUE, RECORDED IN BOOK 725 OF OFFICIAL RECORDS, PAGE 249, SANTA CLARA COUNTY RECORDS; THENCE NORTH 49°40'30" EAST 203.71 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF MAUDE AVENUE; THENCE ALONG THE LAST MENTIONED LINE SOUTH 40°19'30" EAST 249.93 FEET; THENCE SOUTH 61°40'30" WEST 168.66 FEET TO THE AFOREMENTIONED NORTHEASTERLY LINE OF THE LANDS OF EASTWOOD; THENCE ALONG THE LAST MENTIONED LINE NORTH 50°32'40" WEST 218.33 FEET TO THE POINT OF BEGINNING; SAID ABOVE DESCRIBED PARCEL OF LAND IS NOW KNOWN AS BEING A PORTION OF LOT 1 OF TRACT NO. 2917 ACCORDING TO THE OFFICIAL MAP THEREOF FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON SEPTEMBER 26, 1961 IN BOOK 138 OF OFFICIAL RECORDS, PAGE 25.

PARCEL 14:

PARCEL 1

BEGINNING AT AN IRON BAR IN THE CENTER LINE OF THE MOUNTAIN VIEW-ALVISO ROAD FROM WHICH A GRANITE MONUMENT, WITH A BRASS PLUG, IN THE CENTER OF SAID ROAD BEARS NORTH 49° 12' EAST A DISTANCE OF 201.47 FEET, SAID GRANITE MONUMENT LYING SOUTH 56° 48' 30" WEST A DISTANCE OF 50.55 FEET FROM THE INTERSECTION OF SAID CENTER LINE WITH THE CENTER LINE OF MAUDE AVENUE, AND RUNNING NORTH 50° 26' 10" WEST ALONG THE SOUTHWESTERLY LINE OF THE PROPERTY OF JAMES LOGUE, HEREINAFTER REFERRED TO, A DISTANCE OF 63.63 FEET TO A SOUTHERLY CORNER IN THAT CERTAIN PARCEL OF LAND CONVEYED TO KATHLEEN M. TAYLOR BY THAT CERTAIN DEED RECORDED MARCH 2, 1955 IN BOOK 3099, PAGE 289, SANTA CLARA COUNTY RECORDS, THENCE NORTH 39° 33' 50" EAST ALONG A SOUTHEASTERLY LINE OF SAID PARCEL OF LAND A DISTANCE OF 60.03 FEET TO AN ANGLE IN SAID PARCEL OF LAND, THENCE SOUTH 50° 29' EAST 43.40 FEET TO A POINT IN THE NORTHWESTERLY LINE OF MOUNTAIN VIEW-ALVISO ROAD; 60 FEET WIDE; THENCE NORTH 49° 12' EAST ALONG SAID NORTHWESTERLY LINE A DISTANCE OF 66.07 FEET; TO A POINT IN THE SOUTHWESTERLY LINE OF MAUDE AVENUE AS

SHOWN UPON THAT CERTAIN MAP OF TRACT NUMBER 2917, RECORDED AUGUST 26, 1961 IN BOOK 138 OF MAPS, PAGES 24 AND 25, SANTA CLARA COUNTY RECORDS; THENCE SOUTH 40° 19' 30" EAST, 30 FEET MORE OR LESS TO THE CENTER LINE OF THE MOUNTAIN VIEW-ALVISO ROAD; THENCE SOUTH 49° 06' 50" WEST ALONG SAID CENTERLINE TO THE POINT OF BEGINNING. EXCEPTING THEREFROM THE LANDS CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED AUGUST 2, 1994 AS INSTRUMENT NO. 12602375, OFFICIAL RECORDS OF SANTA CLARA COUNTY.

PARCEL TWO

BEGINNING AT AN IRON BAR IN THE CENTER LINE OF THE MOUNTAIN VIEW-ALVISO ROAD FROM WHICH A GRANITE MONUMENT, WITH A BRASS PLUG, IN THE CENTER OF SAID ROAD BEARS NORTH 49° 12' EAST A DISTANCE OF 201.47 FEET, SAID GRANITE MONUMENT LYING SOUTH 56° 48' 30" WEST A DISTANCE OF 50.55 FEET FROM THE INTERSECTION OF SAID CENTER LINE WITH THE CENTER LINE OF MAUDE AVENUE, AND RUNNING NORTH 50° 26' 10" WEST ALONG THE SOUTHWESTERLY LINE OF THE PROPERTY OF JAMES LOGUE, HEREINAFTER REFERRED TO, A DISTANCE OF 63.63 FEET TO A 3/4" IRON PIPE AT THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID SOUTHWESTERLY LINE AND RUNNING NORTH 39° 33' 50" EAST A DISTANCE OF 60.03 FEET TO A 3/4" IRON PIPE; THENCE SOUTH 50° 29' EAST A DISTANCE OF 43.40 FEET TO A 3/4" IRON PIPE SET IN THE NORTHWESTERLY LINE OF THE MOUNTAIN VIEW-ALVISO ROAD, 60 FEET WIDE, THENCE NORTH 49° 12' EAST ALONG SAID NORTHWESTERLY LINE, A DISTANCE OF 66.07 FEET TO A 3/4" IRON PIPE; THENCE LEAVING SAID NORTHWESTERLY LINE AND RUNNING NORTH 40° 13' WEST A DISTANCE OF 174.48 FEET TO A 3/4" IRON PIPE; THENCE SOUTH 61° 47' WEST A DISTANCE OF 168.66 FEET TO A 3/4" PIPE SET IN SAID SOUTHWESTERLY LINE OF THE PROPERTY OF JAMES LOGUE; THENCE RUNNING SOUTH 50° 26' 10" EAST ALONG SAID SOUTHWESTERLY LINE, A DISTANCE OF 181.03 FEET TO THE TRUE POINT OF BEGINNING. BEING A PORTION OF THAT CERTAIN 0.63828 ACRE PARCEL OF LAND SHOWN ON THAT CERTAIN RECORD OF SURVEY MAP FILED IN THE OFFICE OF THE COUNTY RECORDER IN BOOK 43 OF MAPS, AT PAGE 44 ON THE 24TH DAY OF JUNE, 1953.

BEING ALSO A PORTION OF THAT CERTAIN 101.56 ACRE TRACT OF LAND CONVEYED BY DEED DATED APRIL 21, 1919 BY JAMES LOGUE TO CATHERINE LOGUE, HIS WIFE, AND RECORDED APRIL 3, 1935 IN VOL. 725, PAGE 249 OF OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

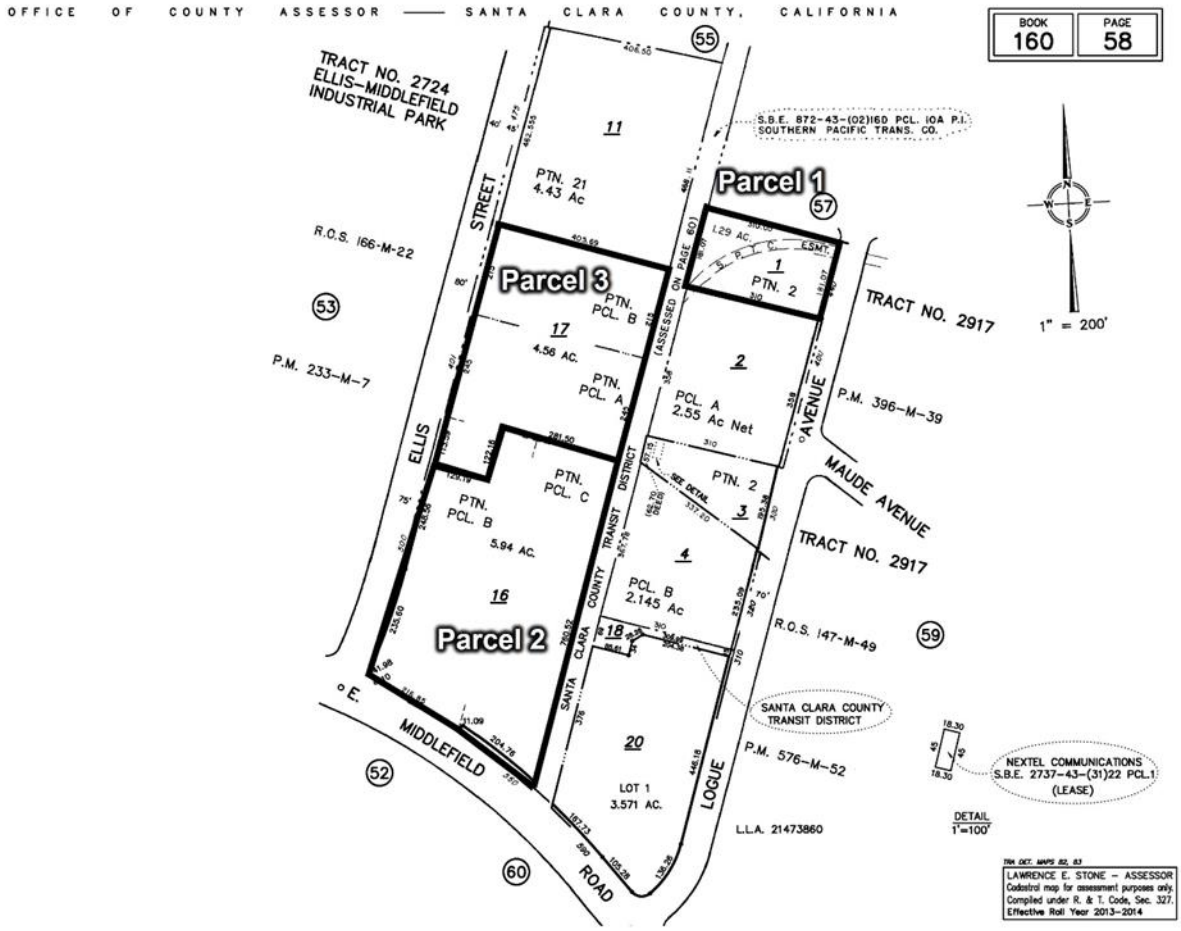
ALSO DESCRIBED AS PARCEL A AS SHOWN UPON THAT CERTAIN PARCEL MAP FILED FOR RECORD JULY 1, 1981 IN BOOK 486 OF MAPS, PAGE 54 SANTA CLARA COUNTY RECORDS.

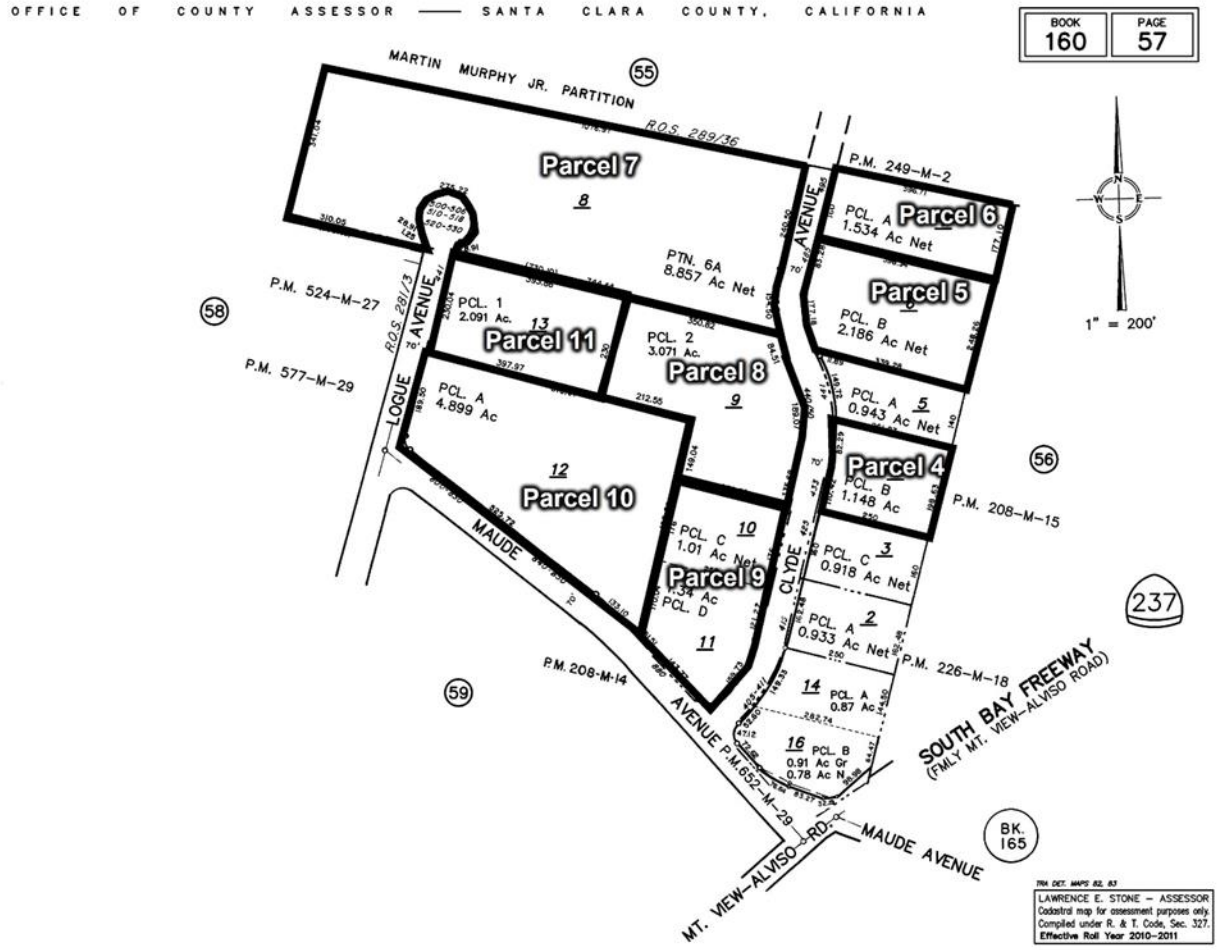
APN: 160-58-001 (Affects Parcel 1)
APN: 160-58-016 (Affects Parcel 2)
APN: 160-58-017 (Affects Parcel 3)
APN: 160-57-004 (Affects Parcel 4)
APN: 160-57-006 (Affects Parcel 5)

APN: 160-57-007 (Affects Parcel 6)
APN: 160-57-008 (Affects Parcel 7)
APN: 160-57-009 (Affects Parcel 8)
APN: 160-57-010 (Affects Parcel C of Parcel 9)
APN: 160-57-011 (Affects Parcel D of Parcel 9)
APN: 160-57-012 (Affects Parcel 10)
APN: 160-57-013 (Affects Parcel 11)
APN: 160-59-005 (Affects Parcel 13)
APN: 160-59-006 (Affects Parcel 14)

EXHIBIT B

PROPERTY DIAGRAM




OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA
BOOK 160
PAGE 57
MARTIN MURPHY JR. PARTITION
R.O.S. 289/36
P.M. 249–M–2
Parcel 7
8
Parcel 6
PCL. A
1.534 Ac Net
PTN. 6A
8.857 Ac Net
Parcel 5
PCL. B
2.186 Ac Net
P.M. 524–M–27
R.O.S. 281/13
LOGUE AVENUE
PCL. 1
2.091 Ac.
13
Parcel 11
PCL. 2
3.071 Ac.
Parcel 8
9
P.M. 577–M–29
PCL. A
4.899 Ac
12
Parcel 10
PCL. A
0.943 Ac Net
5
Parcel 4
PCL. B
1.148 Ac
P.M. 208–M–15
PCL. C
1.01 Ac Net
10
Parcel 9
PCL. C
0.918 Ac Net
3
PCL. A
0.934 Ac
PCL. D
11
PCL. A
0.933 Ac Net
2
CLYDE AVENUE
MAUDE AVENUE
P.M. 208-M-14
P.M. 226–M–18
14
PCL. A
0.87 Ac
16
PCL. B
0.91 Ac Gr
0.78 Ac N
SOUTH BAY FREEWAY
(FMLY MT. VIEW–ALVISO ROAD)
P.M.652–M–29
MT. VIEW–ALVISO RD.
MAUDE AVENUE
BK. 165
1" = 200'
55
56
58
59
237
LAWRENCE E. STONE – ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2010–2011

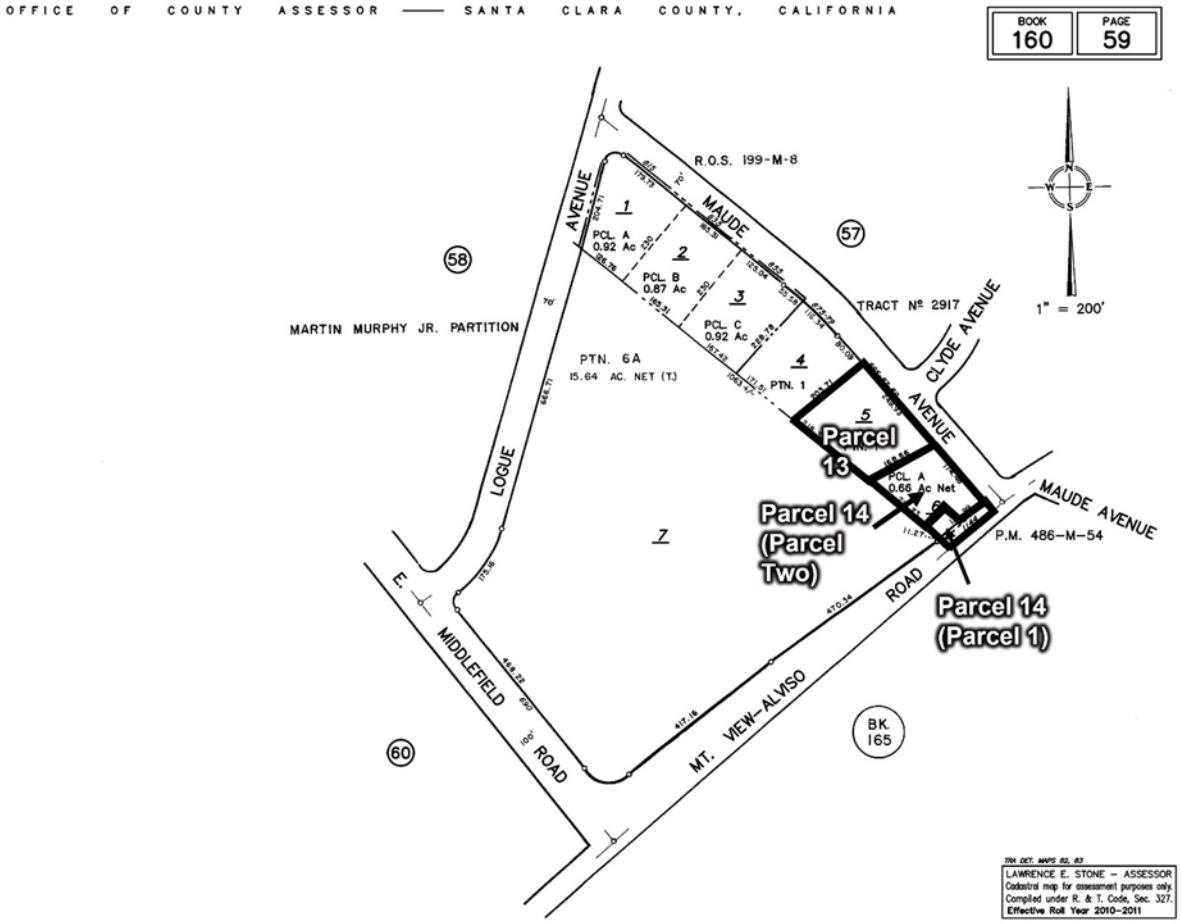

OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA
BOOK 160
PAGE 59
R.O.S. 199-M-8
MAUDE AVENUE
LOGUE AVENUE
CLYDE AVENUE
MAUDE AVENUE
MARTIN MURPHY JR. PARTITION
TRACT Nº 2917
1" = 200'
PCL A 0.92 Ac
PCL B 0.87 Ac
PCL C 0.92 Ac
PTN. 6A
15.64 AC. NET (T.)
PTN. 1
PCL A 0.66 Ac Net
Parcel 13
Parcel 14 (Parcel Two)
Parcel 14 (Parcel 1)
P.M. 486-M-54
E. MIDDLEFIELD ROAD
MT. VIEW-ALVISO ROAD
BK. 165
LAWRENCE E. STONE – ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2010-2011

EXHIBIT C

PROJECT SUMMARY

TABLE C1: PROJECT SUMMARY

Development Metric	Maximum Development	
	Total	**Parcel Details**
Total Residential Units	1,900	R1, R2, R3, R4a, R4b, R5, R6
Affordable Units (via BMR Alternative Mitigation Delivery)	338 to 380 via 2.4 acres	**R4a:** 179 to 210, 1.12 ac **R6:** 159 to 170, 1.28 ac
Market-Rate Units	1,520	**R1:** 400 **R4b**: 90 **R2:** 450 **R5**: 310 **R3:** 270
Residential Base GSF	1,528,064 (1.0 FAR)	**High-Intensity Subarea:** *R1, R2* – 472,759 **Medium-Intensity Subarea:** *R3, R4a, R4b, R5, R6* – 1,055,305
Residential Net New GSF (No Existing Residential)	1,726,000	**R1:** 320,000 **R4b:** 95,000 **R2:** 363,000 **R5:** 340,000 **R3:** 263,000 **R6:** 155,000 **R4a:** 190,000
Above-Grade Residential Parking (GSF, Counted toward FAR)	200,000	**R1:** 39,000 **R4b:** 10,600 **R2:** 36,000 **R5:** 42,000 **R3:** 32,000 **R6:** 18,000 **R4a**: 22,400
Total Residential GSF	1,926,000	**R1:** 359,000 **R4b:** 105,600 **R2:** 399,000 **R5:** 382,000 **R3:** 295,000 **R6:** 173,000 **R4a**: 212,400
Residential Bonus FAR GSF	397,936	**High-Intensity Subarea:** *R1, R2* – 285,241 **Medium-Intensity Subarea:** *R3, R4a, R4b, R5, R6* – 112,695

Development Metric	Maximum Development	
	Total	**Parcel Details**
Total Office/R&D GSF	1,317,000	O1, O2, O3, O4, O5
Existing Office/R&D GSF	684,646	**High-Intensity Subarea**: 237,219 **Medium-Intensity Subarea:** 365,459 **Low-Intensity Subarea:** 81,968
Office/R&D Base FAR (GSF)	694,075 (0.40 FAR)	**High-Intensity Subarea:** *O1* - 189,104 **Medium-Intensity Subarea:** *O2, O3, O4* – 422,122 **Low-Intensity Subarea:** *O5* –82,849
Office/R&D net new GSF	632,354	**High-Intensity Subarea:** *O1* – 204,720 **Medium-Intensity Subarea:** *O2, O3, O4* – 426,753 **Low-Intensity Subarea:** *O5* - 881
Above-Grade Office Parking (GSF, Exempt from FAR)	447,064	**O1:** Below grade **O5:** None **O2:** 60,656 **P1:** 202,124 **O3:** 48,000 **P2**: 95,780 **O4:** 40,504
Office/R&D Bonus FAR (GSF)	622,925	**High-Intensity Subarea:** *O1* – 252,835 **Medium-Intensity Subarea:** *O2, O3, O4* – 370,090 **Low-Intensity Subarea:** *O5* - None
Active Use Space GSF (Exempt from FAR per Precise Plan qualifications)	50,000	**R1:** 18,308 **R4b:** 3,621 **R2:** 12,634 **R5:** 5,894 **R3:** 4,543 **R6:** None **R4a:** None **Ellis Park:** 1,000 **P2:** 4,000
Optional District Systems Central Utility Plant (GSF) (Exempt from FAR)	45,000	Located in O1
Total Development GSF (GSF with FAR exemptions)	3,785,064 (3,243,000)	

TABLE C2: EXISTING SITES AND BUILDING SUMMARY

Character Subarea		Existing Address	Existing Building SF	Existing Parcel Size
MIXED-USE	High-Intensity	**500 E. Middlefield Rd**	136,377	272,822
		401 Ellis St	100,842	199,937
		Subtotal	**237,219**	**472,759**
	Medium-Intensity	**440 Logue Ave**	12,960	55,346
		441 Logue Ave	33,300	91,145
		500 Logue Ave ***(Incl. 510, 520, 530 Logue Ave; 510/516, 500/506, 520/526 Clyde Ave)***	135,279	385,564
		440 & 450 Clyde Ave	46,488	133,748
		420 Clyde Ave	20,758	44,041
		880 Maude Ave	20,114	58,587
		800-850 Maude Ave	70,990	213,371
		800 Maude Ave	*17,820*	
		830 Maude Ave	*17,415*	
		840-850 Maude Ave	*35,755*	
		885 Maude Ave	16,000	42,482
		891 Maude Ave	9,570	27,797
		Subtotal	**365,459**	**1,052,081**
EMPLOYMENT NORTH	Low Intensity	**433 Clyde Ave**	18,042	50,005
		485 Clyde Ave	47,482	95,222.16
		495 Clyde Ave	16,444	66,901.84
		Subtotal	**81,968**	**212,129**
		TOTAL	**684,646**	**1,736,969 (39.8 ac)**
DURING PROJECT – SITE AREA CHANGE				
With Logue Avenue Street Vacation/Reconstruction Developer gains 3,224 sq. ft. of land area from City			**(N) Medium Intensity Subtotal**	**1,055,304**
			(N) Total Site Area	**1,740,193 (39.9 ac)**

EXHIBIT D

PHASING PLAN AND DIAGRAM

TABLE D1: PHASING PLAN

	DEMOLISH		**CONSTRUCT**[1]				**PARK LAND**	**OFF-SITE IMPROVEMENTS**[2]
	(E) Site Address	(E) Office SF	Residential *Units, GSF (Parking AGSF*[3]*)*		Office	Active Uses *GSF*	Acreage of Credit	List of Improvements
PHASE 1	500 E. Middlefield Rd	136,377	R1	400 units, 320,000 GSF (*39,000 AGSF*)		18,308 GSF	Gateway Park: 0.5 ac Bridge Open Space *(irrevocable offer)*: 1.36 ac Ellis POPA: Approx. 1.94 ac	• Install VTA bus stop modifications on Middlefield Road & midblock crossing improvements • Sidewalk and bike lane improvements on Middlefield Rd
	885 Maude Ave	16,000	R2	450 units, 363,000 GSF (*36,000 AGSF*)		12,634 GSF		
	891 Maude Ave	9,570						
	830 Maude Ave	17,415	R4a	Deliver 1.28 acre site		POPA Open Space: 1,000 GSF		
	840-850 Maude Ave	35,755						
	440 Logue Ave	12,960	R6	Deliver 1.12 acre site				
	Phase 1 Subtotals	**228,077**	**850 units 683,000 GSF (*75,000 AGSF*)**			**31,942 GSF**	**0.5 ac Park 1.36 ac Offer 1.94 ac POPA**	

[1] All residential units and residential, office, and active use square footages listed are expressed as maximums. Residential includes market-rate residential units only.
[2] Off-site improvements are from the MTA prepared for the Project EIR.
[3] AGSF – Above Ground Square Foot. Provided for informational purposes; counts toward FAR for residential/mixed use buildings.

	DEMOLISH		CONSTRUCT				PARK LAND	OFF-SITE IMPROVEMENTS
PHASE 2	(E) Site Address	(E) Office SF	Residential	Office *GSF, (Parking AGSF)*		Active Uses	Acreage or Credit	List of Improvements
	401 Ellis St	100,842		O1	441,939 GSF (*0 AGSF*) Central Plant: 45,000 GSF		Bridge Open Space: 1.36 ac Ellis POPA: Approx. 0.93 ac	• Ellis St. sidewalk and bike lanes • Ellis St. midblock improvements • Ellis St. traffic signal at O1/R2 service street
	433 Clyde Ave	18,042						
	500-520 Logue Ave	66,209						
	441 Logue Ave	33,300		O2	190,000 GSF (*60,656 AGSF*)			
	440-450 Clyde Ave	46,488						
	Phase 2 Subtotals	**264,881**	**631,939 GSF (excl. 45,000 exempt GSF) (*60,656 AGSF*)**				**1.36 ac Park 0.93 ac POPA**	

	DEMOLISH		CONSTRUCT				PARK LAND	OFF-SITE IMPROVEMENTS
PHASE 3	(E) Site Address	(E) Office SF	Residential *Units, GSF (Parking AGSF)*		Office	Active Uses *GSF*	Acreage or Credit	List of Improvements
	800 Maude Ave	17,820	R3	270 units, 263,000 GSF (*32,000 AGSF*)		4,543 GSF	Maude Park: 5.11 ac	• Logue Ave midblock crossing and street extension • Logue Ave sidewalks/bike lanes • Maude Ave sidewalks/bike lanes
	420 Clyde Ave	20,758	R4b	90 units, 95,000 GSF (*10,600 AGSF*)		3,621 GSF		
	880 Maude Ave	20,114	R5	310 units, 340,000 GSF (*42,000 AGSF*)		5,894 GSF		
	Phase 3 Subtotals	**58,692**	**670 units 698,000 GSF (*84,600 AGSF*)**			**14,058 GSF**	**5.11 ac Park**	

	DEMOLISH		CONSTRUCT				PARK LAND	OFF-SITE IMPROVEMENTS
	(E) Site Address	(E) Office SF	Residential	Office *GSF* *(Parking AGSF)*		Active Uses *GSF*	Acreage or Credit	List of Improvements
PHASE 4	485 Clyde Ave	47,482		O3	310,000 (*48,000 GSF*)		None	• Both Clyde Ave midblock crossings and roadway improvements, including restriping/bike lanes.
	495 Clyde Ave	16,444		O4	292,212 (*40,504 GSF*)			
	530 Logue Ave	17,262		O5/ P1	82,849 (*202,124 AGSF*)			
	500-526 Clyde Ave	51,807		P2	(*95,780 AGSF*)	4,000 GSF		
	Phase 4 Subtotals	**132,995**		**685,061 GSF (*386,408 AGSF*)**		**4,000 GSF**		
TOTALS		**684,645 GSF**	**1,520 units 1,381,000 GSF (*159,600 AGSF*)**	**1,317,000 GSF (*447,064 AGSF*)**		**50,000 GSF**	**6.97 ac Parks 2.87 ac POPA**	

Phasing Diagram

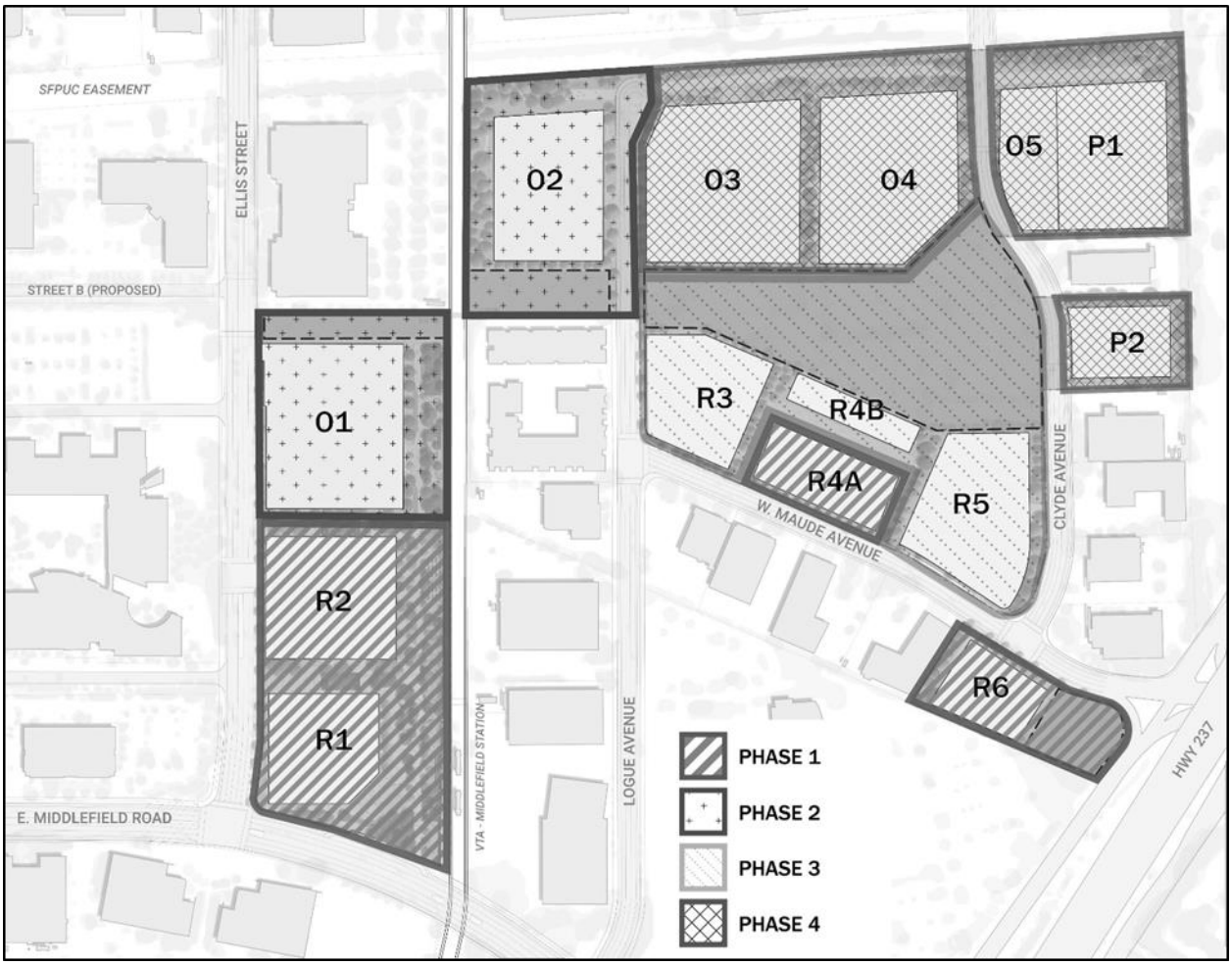


EXHIBIT E

PROJECT'S COMPLIANCE PLANS

TABLE E1: JOBS-HOUSING COMPLIANCE STRATEGY
Minimum Requirement: 3 residential units required per 1,000 net new office square foot

Phase	Office				Housing		Job-Housing Linkage Program Compliant
	Demolished	Proposed	Rebuilt	Net New	Required	Proposed	
PHASE 1	228,077 SF	None			None	850 units + 380 unit BMR credit 1,230 units	**YES** Surplus 1,230 units
PHASE 2	264,881 SF	631,939 SF	492,958 SF	138,981 SF	417 units	None	**YES** Surplus of 813 units
PHASE 3	58,692 SF	None			None	670 units	**YES** Surplus of 1,483 units
PHASE 4	132,995 SF	685,061 SF	191,687 SF	493,373 SF	1,480 units	None	**YES** (1,480 < 1,483)
TOTALS	**684,645 SF**	**1,317,000 SF**	**684,645 SF**	**632,354 SF**	**1,897 units**	**1,900 units**	**YES**

TABLE E2: PARK LAND COMPLIANCE STRATEGY

PARKLAND PROPOSAL & REQ.	PHASE 1	PHASE 2	PHASE 3	PHASE 4	TOTAL
No. of Market Rate Units	R1: 450 units R2: 400 units **Total: 850 units**	None	R3: 270 units R4b: 90 units R5: 310 units **Total: 670 units**	None	**1,520 units**
Park Land Proposed					
Land Dedication/ Irrevocable Offer	Gateway Park: **0.5 ac** Bridge Open Space[4]: **1.36 ac**	Provide Bridge Open Space	Maude Park: **5.11 ac**	None	**6.97 ac**
POPA Credit[5] (75% of acreage)	Ellis POPA: 1.94 ac x 75% = **1.455 ac**	Ellis POPA: 0.93 ac x 75% = **0.697 ac**	**None**	None	2.87 ac x 75% = **2.152 ac**
Total Proposed	0.5 + 1.36 + 1.455 = **3.315 ac**	**0.697 ac**	**5.11 ac**	None	**9.12 ac**
Park Land Required (Dedication or In-Lieu Fee)					
Total Land Dedication Required	R1: 450 units x 0.0060 = 2.7 ac + R2: 400 units x 0.0060 = 2.4 ac **Total 5.1 ac**	*No New Required.* **1.785 ac**	R3: 270 units x 0.0060 = 1.62 ac, R4b: 90 units x 0.0060 = 0.54 ac, + R5: 310 units x 0.0060 = 1.86 ac **Subtotal 4.02 ac** + 1.088 ac remains **Total 5.11 ac**	None	**9.12 acres**
Total In-Lieu Fee Required	5.1 ac x $10.5 M/ac = **$53,550,000**	*No New Required.* **$34,020,000**	5.11 x $10.5M/ac = **$53,655,000**	None	**$95,760,000**
Park Land Obligations Owed to City (Land or Fee[6])					
Land Dedication Owed	5.1 – 3.315 = **1.785 ac**	1.785-0.697 = **1.088 ac**	5.11 - 5.11 = **0 ac**	N/A	**0 ac**
In-Lieu Fee Owed **Letter of Credit to City**	**$18,742,500** **$34,020,000**	**$11,424,000** **$18,742,500**	**$0**	N/A	**$0**
Percent Compliant	**35**%	**61**%	**100**%	**100%**	**100**%

[4] Bridge Open Space is an irrevocable offer of dedication in Phase 1 with land delivered in Phase 2; counted in Phase 1 delivery.
[5] Ellis POPA Open Space is delivered in two development phases. Credit shown per phase. City to retain Letter of Credit for equivalent in-lieu fee for POPA Open Space until Completed (*Letter of Credit to City*).
[6] In-Lieu fee subject to annual escalator in Exhibit I.

TABLE E3: COMMUNITY & PUBLIC BENEFITS COMPLIANCE STRATEGY

PHASE	FAR				COMMUNITY BENEFIT		PUBLIC BENEFIT
	Character Subarea	Base	Proposed	Bonus	Required[1]	Proposed	
PRE-DEVELOPMENT						• Pay **$500,000** 1st People Centric Funds in 90 days	• Expended **$250,000** on Bridge Feasibility Study
PHASE 1	**High Intensity** (Residential)	472,759 SF	757,999 SF	285,240 SF	285,240 SF x $5.45/SF = **$1,554,558**	• Initiate Small Business Diversification and Nonprofit Inclusion Program **Total: $18,643,457**	• Set up Tax Point of Sale Designation • Execute POPA Agreement for City use of plaza and Community Pavilion
	Medium Intensity (Residential, Affordable)	1,055,304 SF	385,400 SF	None	**None**		
PHASE 2	**High Intensity** (Office)	189,104 SF	441,939 SF	252,835 SF	252,835 SF x $27.25/SF = **$6,889,754**	• Continue Small Business Diversification and Nonprofit Inclusion Program	• Pay **$1 Million** 2nd People Centric Funds • Deliver **$1 Million** Public Art
	Medium Intensity (Office)	422,122 SF	190,000 SF	None	**None**		
PHASE 3	**Medium Intensity** (Residential)	1,055,304 SF	782,600 SF + 385,400 SF 1,168,000 SF	112,696 SF	112,696 SF x $5.45/SF = **$614,193**		• Pay **$9 Million** Maude Park Funding
PHASE 4	**Medium Intensity** (Office)	422,122 SF	602,212 SF + 190,000 SF 792,212 SF	370,090 SF	370,090 SF x $27.25/SF = **$10,084,952**		• Execute Shared Parking Agreement for public use of parking (see Exhibit K)
	Low Intensity (Office)	82,849 SF	82,849 SF	None	**None**		
TOTAL		**Residential**	1,926,000 SF	397,936 SF	$2,168,751	**$19,143,457**	**$11,250,000**

[1] Subject to escalator per Exhibit I.

EXHIBIT F

INTENTIONALLY OMITTED

EXHIBIT G

PARKS DELIVERY PLAN

This exhibit includes information on intended timing of park delivery within the Master Plan area and the anticipated City park design process for Maude Park.

TABLE G1: PARKLAND DELIVERY STRATEGY

Park Land Delivery Schedule						
Phase of Development	**Park Land Requirement (in ac)**	**In Fee Land Delivery**	**To Be Constructed During Phase**	**Irrevocable Offer of Dedication**	***Parkland Balance Remaining (in ac)***	**Letter of Credit[1]**
Phase 1	5.1 ac	Gateway Park: 0.5 ac	Ellis POPA Open Space Credit: 1.455 ac	Bridge Open Space: 1.36 ac	*1.785 ac*	3.24 ac[2] x $10,500,000
	Phase 1 Subtotal	0.5 ac	1.455 ac	1.36 ac		$34,020,000
Phase 2	1.785 ac	Bridge Open Space: 1.36 ac	Ellis POPA Open Space Credit: 0.697 ac	None	*1.088 ac*	1.785 ac[3] x $10,500,000
	Phase 2 Subtotal	Incl. In Phase 1	0.697 ac	None		$18,742,500
Phase 3	5.11 ac	Maude Park: 5.11 ac	None	None	0	None
	Phase 3 Subtotal	5.11 ac	None	None		None
Phase 4	None	None	None	None	0	None
	Phase 4 Subtotal	None	None	None		None

[1] Subject to escalator per Exhibit I, calculated prior to building permit issuance when park land is owed and reissued at time of annual review of Agreement.
[2] 3.24 acres for Letter of Credit includes 1.785 acres owed and 1.455 acres of POPA Open Space under construction in Phase 1.
[3] 1.785 acres for Letter of Credit includes remaining POPA Open Space under construction in Phase 2 (excluding Phase 1 POPA Open Space, which is assumed Completed).

TABLE G2: MAUDE PARK DESIGN AND CONSTRUCTION DELIVERY SCHEDULE

Process	Typical Time[1]	Process Step[2]	City Tasks	Developer Involvement
PRE-DESIGN				
Developer Action: Provide 2-year written notification to City of planned delivery date of Parcel Park 3 for City to begin pre-design. Pay 22% of funding to City no later than 90 days after giving the 2-year notice.				
PRE-DESIGN	2 - 4 Months	1. Process Begins	• Assign City Project Manager • Funding Reservation • Release RFP for Design Consultant • Consultant Selection Process • Execute Consultant Contracts	• Provide comments on draft RFP to City • Review and provide comments on consultant responses to RFP
PARK DESIGN PROCESS				
DESIGN CONCEPTS	5 Months	2. Design	• Start designing concepts • Refer to input from Parks & Recreation Strategic Plan (2023) and Master Plan • Prepare/Host 1st Community Meeting	• Invite to project kick-off meeting; • Review/comment on materials prior to 1st Community Meeting • Invite to 1st Community Meeting; present context setting • Attend meeting debrief with Project Team
	2 Months	3. Define	• Prepare/Host 2nd Community Meeting • Develop 3 design concepts for public input	• Review/comment on 3 concepts prior to 2nd Community Meeting • Invite to 2nd Community Meeting; vote on design concepts • Attend meeting debrief with Project Team
	2 Months	4. <u>Overlapping Steps:</u> A. Preferred Concept B. Public Art Process with Visual Arts Committee (VAC)	<u>A. Preferred Concept:</u> • Prepare/Host 3rd Community meeting • Present Preferred Concept • Initiate Park Naming Process	• Review/comment on preferred concept prior to 3rd Community Meeting • Invite to 3rd Community Meeting • Direct any desired public artists to submit RFP/RFQ • Invite to VAC meeting

TABLE G2: MAUDE PARK DESIGN AND CONSTRUCTION DELIVERY SCHEDULE

Process	Typical Time[1]	Process Step[2]	City Tasks	Developer Involvement
			B. Public Art Process • Initiate Artist RFP/RFQ Process ("Call for Artists") • Select Artist	• Attend VAC meeting debrief with Project Team
APPROVE DESIGN	1-2 Months	5. Parks and Recreation Commission (PRC) Input	• Present preferred park design concept • Present VAC recommended artist selection • Present park name	• Invite to PRC & City Council meetings • Attend PRC and City Council debrief meetings with Project Team
	1-2 Months	6. City Council Input		
	Developer Action: Deliver "development ready" Parcel Park 3 to City and pay 78% of funding to City at least 90 days prior to City's completion of 100% park design plans and Council approval thereof.			
	4-6 Months	7. Final Design and Approval	• Complete final design plans • Council approves plans, specifications and engineering (PS&E) for construction • Final site verification	• Review/comment on design plans and specifications
PRE-CONSTRUCTION				
SELECT CONTRACTOR	3 Months	8. Award Contract	• Send out "Call for Bid" • Review bids and select contractor • Award Construction Contract	• If desired, can direct recommended contractors to City's bid website to submit
PARK CONSTRUCTION				
CONSTRUCTION	12 Months	9. Construction	• Construct Park • Install Public Art	• To maintain a timely schedule, Developer must not impede construction access or activities on the park site

TABLE G2: MAUDE PARK DESIGN AND CONSTRUCTION DELIVERY SCHEDULE

Process	Typical Time[1]	Process Step[2]	City Tasks	Developer Involvement

Notes:

1. Typical Time – Estimate based on City's prior park design and delivery experience. Subject to change based on public process.
2. Process Step – A particular milestone step in the City's standard park design and construction process.
3. Project Manager –As defined in Section 1.3 of this Agreement.
4. Project Team –As defined in Section 1.3 of this Agreement.

EXHIBIT H

ELLIS POPA OPEN SPACE TERMS

This exhibit includes key terms for a future Covenants, Agreements, and Deed Restrictions for Privately Owned Publicly Accessible Open Space ("POPA Agreement") between the Parties, which are exclusively related to Project-specific definitions, operations, use, and public access for the Ellis POPA Open Space. These terms are in addition to all other standard terms in the City's POPA Agreement. The POPA Agreement for the Project will be in the City's standard agreement template form approved by the City Attorney as of the date of execution, with additional provisions in accordance with this exhibit.

I. Additional Defined Terms

Capitalized terms that are used but not defined in this exhibit shall have the meaning given to such terms in the POPA Agreement.

"**Bridge**" means the future pedestrian-bicycle bridge over the Valley Transportation Authority light rail line, whose general or conceptual location is shown on page ___ of the Master Plan. The specific and final location and design would be determined at a later date.

"**City Event**" means an event, that the City organizes and runs, during the specified hours of operation for the Ellis Community Pavilion and Ellis Plaza, but in no event more than fifteen (15) hours in duration (not including reasonable set-up and break-down) in any thirty-six (36) hour period, subject to (i) scheduling coordination with other pre-planned events in the calendar that the manager or operator of Ellis Plaza maintains for events in the Ellis Community Pavilion and Ellis Plaza, (ii) City's provision of a self-insurance or joint self-insurance document identifying the self-insured or joint self-insured status or other proof of insurance with insurance coverage limits for general liability and property damage, automobile liability, and workers compensation/employer liability, and (iii) City's commitment to arrange for, or reimburse Developer its out-of-pocket costs of providing, reasonably necessary services such as clean-up/trash removal and security or crowd control services in connection with such events.

"**Elements**" means improvements installed or constructed for recreational purpose or enjoyment included in the Ellis POPA Open Space in accordance with an approved zoning permit.

"**Ellis Community Pavilion**" means an approximately 1,000 square foot community building available for events, whose location is shown in Exhibit ___.

"**Ellis Plaza**" means the 1-acre southern portion of the POPA Open Space shown in Exhibit ____, which complies with the minimum 1-acre Central Park identified in the East Whisman Precise Plan.

"**Ellis POPA Open Space**" shall mean the approximately 2.87 acres of privately-owned, publicly accessible (POPA) open space and the improvements thereon to be developed, operated, maintained and repaired by Grantor and its successors and assigns, at their expense. The POPA

will accommodate a mix of programmed and non-programmed spaces for spontaneous as well as scheduled activities.

"Ellis Walk" means the remaining POPA Open Space outside of Ellis Plaza as described and depicted in Exhibit _____.

"**Extended Operating Hours**" shall mean those operating hours in Ellis Plaza and in certain areas of Ellis Walk adjacent to R1 and/or R2 where ground-floor commercial tenant space frontage is located, as shown in Exhibit _____, which may extend until 9 p.m. on weekdays and 10 p.m. on weekends.

"**Grantor**" means the Developer/owner of the Property of the Ellis POPA Open Space executing the POPA Agreement and its successors and assigns.

"**Multi-Use Path(s)**" means the primary paths on, over and through the POPA Open Space that functions as emergency vehicle access for Buildings and as a public path for bike and pedestrians in accordance with the East Whisman Precise Plan. The Multi-Use Path(s) is governed by a separately recorded public access easement (Instrument No. _____).

"**Operating Hours**" shall mean those operating hours of City parks, which may change from time to time, but are generally 6:00 a.m. to thirty minutes after sundown, on all calendar days.

"**Other Agencies**" means any other regional, state, or federal agency with oversight or interest in the operations of the POPA Open Space, including, but not limited to, the Valley Transportation Authority and California Public Utilities Commission.

"**Property**" refers to parcels O1, R1, and R2 in the Vesting Tentative Map.

"**Public Purposes**" means public access and open space purposes in designated areas and consistent with the intended purposes and uses of the Elements, including, but not limited to, walking, sitting, picnicking, dining, active and passive recreational uses (including of the Elements), and travel by non-automotive means, and further, includes the following uses by the public in the Ellis POPA Open Space:

1. to enjoy the gardens, naturalized areas, and landscaping;
2. to sit on a park chair or one seat on a bench designed for sharing;
3. to deposit waste in trash or recycling receptacles;
4. to walk dogs on a leash so long as the person walking the dog cleans up after the dog and deposits waste into appropriate receptacles;
5. to take souvenir photos; commercial photography by Grantor/owner permission only;
6. unrestricted use by emergency vehicles for fire and life safety access at all times; and
7. unrestricted access to the Valley Transportation Authority light rail station entrance/exit for and by transit riders at all times.

"**Special Event**" shall mean a Grantor, tenant or subtenant, or other third-party entity or organization event, including but not limited to private events, employee gatherings, property management events for residents, business meetings, etc., during the Operating Hours and

Extended Operating Hours, but in no event more than fifteen (15) hours in duration (not including reasonable set-up and break-down) in any thirty-six (36) hour period. These events may limit or restrict attendees to specific persons, and reasonably limit or restrict physical access in a certain subarea(s) within the POPA Open Space (e.g. café kiosk, educational garden, sport court), but in no way may physical access be restricted to the extent that prohibits or prevents required public access in the POPA Open Space or restricts the Public Purposes. "Special Event" as used herein excludes programming events produced by the Grantor, tenant or subtenant, or other third-party entity or organization within the POPA Open Space to activate and serve the Public Purposes, which the public can attend; such events are not subject to the numerical limit applicable to Special Events and may be ticketed events.

II. Events in the POPA Open Space

Each Party agrees and acknowledges that the Ellis POPA Open Space will be concurrently used by City, the public and Grantor. Grantor shall not obstruct, use or permit the use of the Ellis POPA Open Space in any manner that will unreasonably interfere with use for Public Purposes during Operating Hours and Extended Operating Hours. City Events and Special Events shall not interfere with the regular access and operations of the R1 and R2 buildings and their residents and tenants, including Active Uses located therein.

1. Special Event(s) - Special Events shall occur no more than fifteen (15) days in any calendar year, unless otherwise approved in writing by the City.

2. City Event Use(s) – The following City Events for City purposes may occur to allow: (a) use of the Ellis Plaza, free of rental costs, up to a maximum of five (5) times annually; and (b) use of the Ellis Community Pavilion, free of rental costs, up to a maximum of twelve (12) times per year annually. The date and time of uses described in (a) and (b), shall be mutually agreed upon by Grantor and City at the time of request, which can occur throughout the calendar year. City is responsible for procuring appropriate insurance for use of space and shall cover any required cleaning (including cleaning of public restrooms used for any City Event), property damage, and costs associated with event equipment, set up and removal. Grantor shall provide access to existing electricity, water, and existing public restrooms during City Events.

III. Other Rules and Regulations.

1. The Ellis POPA Open Space shall be made available to the public in perpetuity for Public Purposes during the Operating Hours and Extended Operating Hours, subject to Grantor's and its agents' right to exclude the public and/or to temporarily limit access to, and use of, the Ellis POPA Open Space as necessary for Grantor or its authorized occupants or users, or their respective employees, agents, and contractors, to construct, repair, maintain, relocate or replace any improvements located upon the Property from time to time, including, without limitation, the Buildings, the Related Improvements, Other Site Improvements, Elements, and/or other improvements.

2. All ground-floor commercial uses in Buildings fronting along the Ellis POPA Open Space may include Furnishings, which may change from time to time. These Furnishings shall

not impede use or enjoyment of the Ellis POPA Open Space; any Furnishings in the Ellis POPA Open Space must be open to general public use; and no Furnishings shall be permanently affixed within the Ellis POPA Open Space. Any improvements permitted under a building permit for construction of the POPA Open Space do not constitute Furnishings.

3. The rights of the public to the Ellis POPA Open Space shall not include the use of any motorized-scooters, motorcycles or ATV's, or any automobiles, trucks, recreational vehicles or other motorized vehicles on any portion of the Property, excluding vehicles for fire and emergency access, public safety, vehicles expressly authorized by Grantor (including for Special Events), vehicles associated with Other Agencies as allowable under separate agreements, or in connection with maintenance, cleaning, or repair of the Ellis POPA Open Space.

4. Grantor shall have the right to adopt, implement, and impose reasonable rules, regulations, and conditions for use of the Ellis POPA Open Space consistent with this Covenant on the Property to the extent necessary (i) to reasonably impose safety and security requirements in the interest of public health and safety, and (ii) for purposes of preventing (a) interference by any member of the public with the operation of any business conducted by Grantor or its authorized occupants or users of Buildings, Other Site Improvements, Related Improvements, or the Property, and (b) damage to the Property, including any improvements thereon.

5. The covenants and grant of access over the Property shall not constitute a grant of a public easement over, or dedication of, the Ellis POPA Open Space.

6. Developer shall be permitted to install signage citing California Civil Code section 1008 and indicating the purposes of public access on the Property and Grantor's right to regulate safety and security.

7. Details on the future design of the Bridge are unknown at this time, however direct access from the POPA Open Space to the Bridge may be mutually desirable to the Parties. As such, at the time of Bridge design and development, City or Grantor may approach the other Party to consult on the feasibility of providing a direct connection from the POPA Open Space, which may require structure(s), improvements, and separate agreement(s) between the parties to locate on Grantor’s Property.

EXHIBIT I

EXISTING IMPACT FEES

The following impact fees are based on the City's adopted Fiscal Year 2022-23 budget (effective July 1, 2022). Rates are shown as of Effective Date and are adjusted annually as of Effective Date. A fee's annual escalation shall be increased by one of the following factors in the current year (or if not available, the prior year): (a) CPI – Consumer Price Index, or (b) CCI - San Francisco Engineering News-Record Construction Cost Index. *(Note, "SF" = square feet.)*

A. <u>Nonresidential Housing Impact Fee</u> (escalation per CPI – Code §36.40.65(b)(2)).

1. **Office and R&D:** $15.28/net new SF[2] for first 10,000 SF; $30.57/net new SF above 10,000 SF.
2. **Active Use (Retail/Neighborhood Commercial/Community Space/Entertainment/Commercial):** $1.65/net new SF for first 25,000 SF; $3.27/net new SF above 25,000 SF.

   [NOTE: Project is not subject to payment of Below-Market-Rate (BMR) In-Lieu Fees for rental or ownership residential units based on the project providing an Alternative Mitigation per Code §36.40.30.]

B. <u>Park Land Dedication & In-Lieu Fee</u> (based on formula per Code §41.9, escalation per CCI for Variable C)

A = Acreage Required per Dwelling Unit (Medium High and High Density, 26+ du/acre)
B = Net New Market Rate Dwelling Units
C = Fair Market Value Per Acre
F = In-Lieu Fee required
L = Land required for Dedication

[NOTE: Affordable housing is exempt from park land requirements – Code §41.11(c)]

Market Land Value Per SF By Residential Density

Land Value Range	Fair Market Value (Land Value per SF)
Low Density (1-6 du/ac)	$150 - $170
Medium Low (7-12 du/ac)	$160 - $190
Medium Density	$200 - $250
Medium-High and High Density (26+ du/ac)	$270 - $310

NOTE: Project is based on a land value of $241/sf or $10,500,000 per acre.

1. **Land Required for Dedication:**
   A x B = L
   0.0060 ac x 1,520 market-rate units = 9.12 acres
2. **In-Lieu Fee:**
   A x B x C = F
   0.0060 ac x 1,520 market-rate units x $10,500,000/acre = $95,760,000

C. <u>Park Land Credit, Privately Owned/Publicly Accessible (POPA) Open Space</u> (based on Code §41.11(a)(1), escalation per CCI for Variable C). Credit is 75 percent of the value of land (Variable C) devoted to the POPA open space against the land dedication/fee required; *use of formula is for clarity only*.

C = Fair Market Value Per Acre
D = Acreage of POPA open space
E = Percent Park Land Credit
G = POPA Credit Against Park Land Dedication In-Lieu Fee

1. POPA Credit Calculation:

(C x E) x D = G
($10,500,000 x 0.75) x 2.87 acres = $22,601,250
OR (0.75 x 2.87 acres) x $10,500,000 = $22,601,250

D. <u>Citywide Transportation Impact Fee</u> (escalation per CCI – Code §43.5(a))**.**

1. Office and R&D:
a. Office/R&D/Industrial: $5.72/net new SF.
2. Residential:
a. Multi-Family Residential, including stacked condominiums: $3,0004/dwelling unit.
[NOTE: Affordable housing is exempt – except if part of a market-rate project and provided pursuant to density bonus law – Code §43.8(a)(2)]
3. Active Uses (Retail/Neighborhood Commercial/Community/Civic/Service):
a. Service and Retail Commercial: $5.72/net new SF.

E. <u>Water Capacity Fee</u> (escalation per CCI – Code §35.41)**.**

1. Office and R&D, and Active Uses (Retail/Neighborhood Commercial/ Community/ Civic/All Commercial) (based on water meter size):

a. Commercial and Nonresidential fee, including irrigation meter(s):

<u>Meter Size</u>	**Unit Cost (Per Meter)**
¾" Meter:	$7,323
1" Meter:	$12,206
1-1/2" Meter:	$24,409
2" Meter:	$39,055
3" Meter:	$74349
Greater than 3"	$19.528 per gallons/day estimated water demand

2. Residential:
a. Residential Class 3 (Multi-Family): $2,855/dwelling unit.

F. <u>Sewer Capacity Fee</u> (escalation per CCI – Code §35.41).

1. Office and R&D:
a. Office/R&D: $2,603/1,000 net new SF.

2. **Residential:**
   a. Residential Class 3 (Multi-Family): $2,557/dwelling unit.
3. **Active Uses (Retail/Neighborhood Commercial/Community/Civic):**
   a. Commercial/Retail: $1,777/1,000 net new SF.
   b. Restaurant: $14,974/1,000 net new SF.

G. East Whisman Precise Plan Development Impact Fee (escalation per CCI per City Council Resolution No. 18670), see exemptions incl. Neighborhood Commercial uses).

1. Office/R&D*:* $10.75 per net new SF in total, based on the following subtotals:
a. Transportation: $5.35/net new SF
b. Potable Water: $0.30/net new SF
c. Recycled Water: $4.18/net new SF
d. Sewer: $0.92/net new SF

2. Residential: Fee based on the number of bedrooms per dwelling, which includes an additive per bedroom fee for units with more than 3 bedrooms summarized below. The total per unit fee is based on the cumulative subtotals.

No. of Bedrooms	Fee is per dwelling unit, except for per additional bedroom over 3 bedrooms				
	Total	Transportation	Potable Water	Recycled Water	Sewer
Studio	$2,888	$1,278	$193	$900	$517
1 bedroom	$3,356	$1,496	$223	$1,028	$609
2 bedrooms	$5,155	$2,281	$344	$1,607	$923
3 bedrooms	$6,223	$2,762	$416	$1,928	$1,117
Per additional bedroom (< 3 bedrooms)	$864	$392	$58	$257	$157

3. Retail Active use: $18.16 per net new SF in total, based on the following subtotals:

a. Transportation: $13.06/net new SF
b. Potable Water: $0.30/net new SF
c. Recycled Water: $4.18/net new SF
d. Sewer: $0.62/net new SF

H. East Whisman Community Benefit Values (escalation per CCI per City Council Reso. No. 18399)
1. **Office:** $27.25 per SF over 0.40 FAR
2. **Residential/Hotel:** $5.45 per SF over 1.0 FAR

EXHIBIT J

SMALL BUSINESS DIVERSIFICATION AND NON-PROFIT INCLUSION PROGRAM

I. PROGRAM OUTLINE

(A) Intent

The Middlefield Park Small Business Diversification & Non-Profit Inclusion Program, or "Program", seeks to encourage, welcome and assist local businesses owned by women and individuals from underserved backgrounds in order to enhance local economic vitality in and around the Middlefield Park Master Plan (Master Plan) and East Whisman, as well as support businesses who hire women and people of color as employees. The Program also seeks to create opportunities for nonprofits and community uses to provide key community resources, services, and places that foster strong social bonds and contribute to a better quality of life for Mountain View residents. A diverse range of groups can help enrich the character of this new community, from grocers to restaurateurs, community centers and daycares, and aspirational spaces such as art studios, or practical spaces such as a consumer goods repair shop. Overall, the Program is designed to provide tailored support by the Developer representing approximately $18.6 million of value to the community.[xi] The purpose of this document is to provide a Program framework to be implemented by the Developer or assignee, for the duration of the Development Agreement (DA). The Developer will identify specific partners, the businesses or nonprofits served, and the size of the individual tenant spaces throughout the Program and build-out of the Master Plan.

(B) Principles

The Developer will operate the Program under four principles:

1. **Support city goals and East Whisman vision.** The Program will respond to and align with the City of Mountain View's (City) citywide goals and ambitions to create a welcoming, inclusive and sustainable neighborhood and small business community. As a part of this, the Program will support small businesses and nonprofits by helping to fund a portion of their capital and operating costs, as well as provide business development support. The Program aligns with the City's interest in 'people-centric' community benefits, specifically by retaining and growing small businesses through the construction of subsidized space and offering of rent relief. More particularly, this Program aligns with the East Whisman Precise Plan (EWPP) vision, which calls for increasing the area's livability and sustainability by creating active, inviting street life and support for small businesses (EWPP page 36).

2. **Create pathways to market.** The Program will incubate and grow small, local businesses owned by women and individuals from underserved backgrounds, as well as emerging small businesses and nonprofits, by providing direct support and new opportunities to come

[xi] The value of the community benefit program must be equivalent to the adopted fee, which is subject to an annual escalator per Exhibit I.

to market that may not otherwise be available to these groups. The Program also supports businesses that hire women and people of color.

3. **Foster sustainable community partners.** The Program will provide tools and resources to help new businesses find their footing and then mature. The goal is for participating groups to become self-sustaining and find stable locations in or around Middlefield Park and greater Mountain View.

4. **Respond to current and future community needs.** The Program will seek out businesses and nonprofits that help meet the daily needs of current, future and nearby communities, particularly in areas where those needs are currently unmet. This will help bridge gaps that prevent small businesses and nonprofits from thriving and serving their neighbors.

(C) Tools and Resources

To support its principles, the Program establishes a number of tools and resources for participating groups, including:

1. **Quality storefront and Ellis Community Pavilion space.** Participating Groups will typically have leases on Subsidized Active Use Space in Middlefield Park. Located on active plazas and parks, the location itself is the foremost resource. Participating Groups will have frontage onto richly designed and programmed public spaces within the mixed-use community, with thousands of people living or working in the immediate vicinity. People will also be able to easily visit by light rail, bus, bike, or other transportation options delivered within or adjacent to the master plan. The location of each Participating Group's tenant space will be determined by the Developer as each development phase of the Master Plan is constructed and leased out. The minimum targeted amount of space available is 22,000 gross square feet of Subsidized Active Use Space, which includes an approximately 1,000 square foot Ellis Community Pavilion space located in the POPA Open Space.

   Note: Consistent with the EWPP, there is a minimum of 5,000 square feet of ground floor commercial space that is required to be delivered in the vicinity of Ellis Street and East Middlefield Road; that Active Use Space is excluded from this Program.

2. **Capped rents.** Storefront rents will initially be capped at $35 per square foot per year, on a Triple Net basis, on average. For the life of the Program, rents will escalate annually with the Consumer Price Index (CPI). This creates real dollar savings for small businesses and nonprofits and also removes the risk of unexpected rent increases over the life of the Program, helping them to become self-sustaining. Any rental fees for the Ellis Park Community Pavilion will be minimal and would be assessed only to recover ongoing operations, maintenance and management costs.

3. **No cost initial space core and shell.** The design and construction costs of the core and shell portion of the 21,000 gross square feet and the 1,000 gross square foot Ellis Community Pavilion will be funded solely by the Developer. This scope of work includes the superstructure, its shell, mechanical, electrical, and plumbing (MEP) work, a warm

shell level of interior finish, and exterior landscaping, and includes contingency. It includes back of house space such as corridors, trash rooms, loading docks and utility rooms, some of which may be shared with the residential uses, as well as leasable storefront areas. It also includes payment of any required City development fees, such as impact fees, associated with the superstructure. The parking for the tenant space as required by Subsequent Approvals will also be constructed at the Developer's cost. Since these costs are carried by the Developer, the Participating Groups will not be required to raise capital for these costs.

4. **Tenant improvement funding.** The Developer will provide an allowance (up to $125 per gross square foot, escalated annually with CPI) to fund a portion of Tenant Improvements, to help bridge some of the financial gaps in bringing a small business or nonprofit's vision to life.

5. **Soft costs.** The Developer will provide funding for a portion of the soft costs related to starting up a new small business or nonprofit, including design fees, permitting fees, certain legal costs, insurance costs, taxes, marketing and Program operations. Implementing the Program is likely a decade-plus endeavor and comes with a number of operational and overhead costs. The Developer will incur and pay for a portion of these costs as the Program develops to ensure that the value to small businesses, nonprofits and the larger community is realized.

6. **Additional support funding.** In order to support other needs and bridge gaps that may not be anticipated today, the Program also establishes a substantial support fund of approximately $3.1 million dollars, from which funds can be given from time to time to small businesses and nonprofits that operate within the master plan area and over the life of the Program. These are dollars that directly benefit the groups in the Program, and directly contribute to their success. For example, these support funds could be used to, but are not limited to:

    a. provide further rent subsidies,
    b. enhance capital improvements,
    c. cover other business or non-profit expenses,
    d. fund occupancy soft and hard costs for second and third generation tenants in each space,
    e. fund real-time support in the form of small business services coordination as requested by the participating group (up to a limit to be defined by the Program during the Support stage of Implementation), or
    f. further support on-going subsidies for the Ellis Community Pavilion, where minimal rental fees may be assessed only to recover ongoing operations, maintenance and management costs. The management team will handle all reservation requests and maintain an event calendar.

    Some benefits could be delivered through a partnership with an existing community group. The Developer will manage applications and awarding of these additional support funding dollars.

(D) Qualification Criteria

For a small business, nonprofit or other group or individual to qualify to participate in the Program, they must be an entity that fulfills the Program's Principles and meets the criteria set out below. These criteria may not be changed except in writing by both the Developer and the City's Community Development Director. These criteria do not apply to the use of the Ellis Community Pavilion in the POPA Open Space.

1. **Entity Status**
   a. The entity must exist and be established in the State of California.

2. **Entity Ownership**
   a. The entity must be owned or majority controlled by an individual whose primary residence for tax purposes is in Santa Clara or San Mateo County, but with preference given to residence within the City.

3. **Entity Ownership Status**
   a. For a business, the owner(s)must be a woman or from underserved backgrounds that meet the following definitions:

      i. Diverse Business: at least fifty-one percent (51%) underrepresented-, women-, LGTBQ-, disabled and/or veteran- owned, operated and controlled (separate from their employees). For the purposes of the Program, Diverse Businesses include the following:
      ii. Disability Owned Business Enterprise (DOBE): businesses at least fifty-one percent (51%) owned, operated and controlled by a person or persons with a disability.
      iii. Minoritized Business Enterprise (MBE): businesses at least fifty-one percent (51%) owned, operated and controlled by one or more members of one or more minoritized groups.
      iv. Service-Disabled/Veteran Owned Business (SD/VOB): businesses at least fifty-one percent (51%) owned, operated and controlled by one or more persons who is a Veteran or Service-Disabled Veteran.
      v. LGBT Business Enterprise (LGBTBE): businesses at least fifty-one percent (51%) owned, operated and controlled by a person or persons who identifies as a member of the Lesbian, Gay, Bisexual, and Transgender community.
      vi. Woman Business Enterprise (WBE): businesses at least fifty-one percent (51%) owned, operated, and controlled by one or more women.
      vii. Disadvantaged Business Enterprise (DBE): businesses at least fifty-one percent (51%) owned, operated and controlled by a person or persons who is a socially and economically disadvantaged individual. The U.S. Department of Transportation presumes certain groups are disadvantaged, including women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian-Pacific Americans, or other minorities found to be disadvantaged by the U.S. Small Business Administration (SBA).

b. For nonprofits, preference will be given to entities that are non-profit/501€(3) organizations or have fiscal sponsorship from an established 501(c)(3) organization.

c. Any community groups or individuals who may not be incorporated or established in California, but meet the plans and policies for qualification that businesses or non-profits must meet (e.g., book clubs; community groups; architectural, historical or preservation societies or groups; groups or clubs associated with an organized religion; and self-help or self-improvement organization or individuals leading such an organization).

4. Entity Size

a. For a business, its annual proceeds must not exceed an average of $2,000,000 annually for the past five (5) years, or $5,000,000 for a market or grocer.
b. Number of employees should generally not exceed 99.
c. There is no such requirement for nonprofits.

5. Entity Opportunity

a. The business or nonprofit must demonstrate a likelihood of progression to self-sufficiency over the course of their participation in the Program. Developer will meet with Participating Groups and review their business plans to evaluate their eligibility.
b. In the event that there are multiple Qualified Businesses, final selection shall be at the discretion of the Developer. If a suitable business or nonprofit is not identified in the Initial Outreach period established as part of the Execution Stage, the qualification criteria may be adjusted in one or more of the following ways at the sole discretion of the Developer

6. Expanded Entity Ownership

a. The entity must be owned or majority controlled by an individual whose primary residence for tax purposes is in the nine-county San Francisco Bay Area Metropolitan Statistical Area (MSA).

7. Expanded Entity Ownership Status

a. For a business, the individual is not required to be a woman or from an underserved background, if more than 50% of the employees of the business are either women or people of color.

8. Expanded Entity Size

a. For a business, its annual proceeds must not exceed an average of $5,000,000 annually for the past five (5) years, and may be uncapped for a market or grocer.

If a suitable business or nonprofit is not identified in the Secondary Outreach period established as part of the Execution Stage, the qualification criteria shall be suspended and the space leased to any business selected by the Developer. That business will still be eligible to participate in the Program if the business aligns with the Program Principles and Entity Size or Expanded Entity Size (an Interim Participating Group). Upon the date that either the business or

Developer gives notice that they do not intend to renew the lease, the Program would repeat the Initial and Secondary Outreach processes, with the intent to establish a Qualified Business in the space without having a prolonged vacancy. In the event of an unexpected vacancy, the Initial and Secondary Outreach processes would only be performed at the sole discretion of the Developer. If two or more Qualified Businesses have applied under the above criteria for a single space, the Developer shall select the successful entity in its sole discretion. In the event of a prolonged vacancy (more than 3 months), where the Initial and Secondary Outreach processes do not result in a Qualified Business after multiple attempts, the Developer may choose to remove the space from the Program and pay the equivalent Community Benefit fee for that tenant space to meet the project obligation, at which point the tenant space can be utilized by any business entity per the Master Plan and zoning requirements.

(E) Implementation

The Developer will implement the Program in five stages: Initiation, Planning, Execution, Support, and Dissolution, with each phase corresponding to the overall master plan development phasing. This means that the Program may be in the Execution stage for the first phase of the Master Plan while it is only in the Planning stage for the third phase of the Master Plan. Implementation will begin upon approval of the first phase of City permit entitlements.

Stage 1: Initiation

In the initiation stage, the Developer will formally establish the Program and develop the tools and resources it will need to provide value to the community. This work will include, but may not be limited to:

a. Establish Program governance and management structure
b. Create Program charter and goals
c. Explore partnerships with local organizations that provide small business and nonprofits training and support

Stage 2: Planning

In the Planning stage, the Program will identify needs and opportunities in the community that may be addressed in a particular phase of the Master Plan. This work will include, but may not be limited to:

a. Identify local business needs and networks
b. Perform sub-market gaps analysis to identify optimal services
c. Refine or shift program offerings to best support businesses
d. Leverage networks to identify potential existing businesses in East Whisman, greater Mountain View, and Sunnyvale, and then beyond to South Bay/Peninsula
e. Survey existing, eligible small businesses to better understand their growth goals and space needs and leverage this data to inform eligible businesses of the opportunity.
f. Compile an initial list of potential small businesses and nonprofits to be targeted
g. Develop an outreach strategy to inform potentially eligible small businesses and nonprofits of the Program opportunity
h. Draft Covenants, Codes, & Restrictions (CC&R's) and other governance documents, including program eligibility verification process and metrics

Stage 3: Execution
In the Execution stage, the Program will identify specific Qualified Businesses to fill ground floor spaces (storefronts) within a particular development phase of the Master Plan. This work will include, but may not be limited to:

a. Leverage research done in Planning stage
b. Commence Outreach period no later than 12 months after the commencement of construction on the building where the ground floor space has been identified
    i. Initial Outreach period of 6 months
    ii. Secondary Outreach period of 6 months
c. Communicate qualification criteria as defined herein
    i. Final decision on all selections is at the sole discretion of the Developer in accordance with the Program
d. Interview and perform eligibility verification checks on potential Participating Groups
e. As needed, sign Letters of Intent
f. Award initial Participating Groups with support funds and agreements
g. Sign Funding Agreements and execute leases (which must include reference to the Program duration and dissolution process)
h. Coordinate funding disbursements, tenant fit-out, marketing, etc.
i. Identify and refresh roster of potential businesses

In the Execution stage, the Program will establish a reservation system for the Ellis Community Pavilion in the POPA Open Space in the development phase where the space is constructed.

Stage 4: Support
In the Support stage, Program representatives periodically engage Participating Groups, offering tailored assistance and guidance, and also monitor their growth in order to better understand and serve their evolving needs. This work will include, but may not be limited to:

a. Conduct regular business reviews with each tenant
b. Perform ongoing support per agreements, such as activation, marketing and operations support
c. Track tenant success and lessons learned over time
d. Annually review overall program success, project outcomes and lessons learned
e. Adapt support program as needed to amplify small business support and community benefit

Stage 5: Dissolution
When the DA is 6 months from its termination date, the dissolution process will be initiated. This process is intended to provide a conclusion to the Program allowing the Developer to remove all support tools and resources to the Participating Groups with advance notice. All current Participating Groups will be given 90 days written notice when the dissolution process has been initiated, which will include noticing Participating Groups that their capped rents will end at the conclusion of their current lease term, not prior. The Program will evaluate whether each tenant may be signed to a new lease, and if not, and as requested, provide support in seeking a new space in the area.

(F) Monitoring

As part of the Annual Review described in the Development Agreement, the Developer shall submit a summary of the Program's activities in the reporting year, including: (a) a list of all Program participants by business name and location; (b) reporting on funds expended on the key functions of the program in the prior year and cumulatively since inception; (c) the delivery of constructed building space, in lieu of providing construction costs estimates that change over time, (d) a description of all the tools and resources disbursed to the Program participants; (e) a summary of the growth and development of the Program's participants since the prior Annual Review period; and (f) any updates or modifications proposed to the Program. The Annual Review will track progress against delivery of the total value and constructed building space. Any additional or alternative reporting methodology on the Program can be mutually agreed upon by City and Developer at any time during the life of the Program.

II. Valuation of the Program

The value of the Program is $18.5 million dollars, which is the sum of the value of each of the Tools and Resources that implement the Program. The baseline valuation is based on the minimum of 22,000 gross square feet of Active Use space being delivered under the Program "Active Use Subsidized Space". The figure below summarizes the valuation of the two basic components:

Program Components	**Value in 2022**
22,000 square feet of quality storefront and Ellis Community Pavilion in POPA Open Space ● Construction Costs ● Parking ● Initial Fit Out ● Tenant Improvement Allowance ● Soft Costs ● Rent cap and subsidy	$15,512,157
Additional support funding ● Further rent subsidies ● Enhanced capital improvements ● Other business or non-profit expenses ● Occupancy soft and hard costs for second and third generation tenants in each space ● On-going real-time support ● Small business services coordination	$3,131,300
Total Program Value	**$18,643,457**

III. Definitions

Capitalized terms that are used but not defined in this exhibit shall have the meaning given to such terms in the Development Agreement.

"**Annual Review**" means a summary of the Program's actions and progress over the past year, delivered to the City as part of the annual DA review, which shall include information described in paragraph I.F. above.

"**Interim Participating Group**" is any business which does not meet the criteria of the Program entirely, but aligns with the Program Principles. Such a group would need to demonstrate its alignment with the Program Principles, such as through a commitment to hiring and/or contracting practices that align with the Program's qualification criteria, bridging gaps in community needs, or other examples. The Developer, in its sole discretion, shall determine if a group qualifies as an Interim Participating Group. This group is permitted to occupy a tenant space only after the Initial and Secondary Outreach processes have been completed without success in finding a Participating Group.

"**Participating Group**" is any business or nonprofit which has entered into a lease under the Program. They are considered current Participating Groups so long as their lease is in effect and the Dissolution Process is not yet complete. Notwithstanding this, for the purpose of the additional support funding, a business or nonprofit may be considered a Participating Group if they are active in the City with preference given to groups active in the East Whisman Precise Plan area.

"Middlefield Park Small Business Diversification & Non-Profit Inclusion Program", "**Small Business Program**", or "**Program**" consists of a set of tools and resources as further described in this document, which will benefit the East Whisman community and be credited towards Middlefield Park's Community Benefits requirement. Generally, it consists of a set of subsidies and additional, flexible support dollars, totaling approximately $18.6 million in value to the community. Roughly $3.1 million of support funding, administered by Developer, would be used to offset occupancy costs of the organizations occupying space within the Active Use component of the Project, or to provide other assistance consistent with Project objectives. It could also be used to fund soft and hard occupancy costs for second and third generation tenants in each space. The approximately $15.5 million total subsidy value is realized through the provision of 1,000 gross square feet of Ellis Community Pavilion and 21,000 square feet of Active Use floor space at maximum rental rate along with other incentives provided to tenants.

"**Qualified Business**" is any business or nonprofit that meets the minimum qualifications to be a Participating Group, but for which the Developer has not determined is a Participating Group.

"**Triple Net Lease**" is a lease agreement where the tenant pays all the expenses of the property, including real estate taxes, insurance and maintenance, in addition to the cost of rent and utilities.

EXHIBIT K

SHARED PARKING USE AGREEMENT TERMS

This exhibit summarizes key terms to be included in a Shared Parking Agreement between the Parties as described in Section 5.3.5 of the Development Agreement. The Shared Parking Agreement shall be recorded on the parcel(s) for which shared parking is being made available for the use described herein, prior to Building Permit issuance for the improvements proposed upon that parcel(s).

- Use of 40 parking spaces, which may be located on the ground level of the Parking Structure P2 or elsewhere in the Project, based on considerations of ease of the public to access/navigate to the spaces and ease to manage for the property owner. Exact location(s) and configuration(s) to be agreed upon by both Parties.

    a. Parking Structure P2 - With respect to any such spaces that will be located in the parking structure on Parcel P2, such location(s) and configuration(s) shall be included in the design details of the parking structure on Parcel P2.

    b. Elsewhere in the Project – Any location proposed elsewhere within the Project, excluding Parcel P2, must have comparable access to Parcel Park 3 as the P2 parking structure, and be in reasonable proximity to any pedestrian street crossing, if crossing a public street is required.

- Public would have access to such parking spaces on week nights outside of typical business hours (after 5 p.m. until thirty (30) minutes after the closing time for Maude Park) and all day on weekends and holidays.

- Public's use would be at no charge subject to confirmation that such use is in connection with accessing nearby public parks, primarily Parcel Park 3 as shown on the Vesting Tentative Map. Developer may implement some method of validation so that such use can be confirmed.

- Use of and access to such spaces would be subject to Developer's rules and regulations.

EXHIBIT L

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

APN: _____

PARTIAL ASSIGNMENT AND ASSUMPTION OF RIGHTS AND OBLIGATIONS UNDER DEVELOPMENT AGREEMENT

This Partial Assignment and Assumption of Rights and Obligations Under Development Agreement (this "Assignment") dated for identification purposes only as of ____ day of _____, 20___, is entered into by and between _____ALL CAPS_____, a _____[legal entity—Example: sole proprietorship, partnership, corporation, S corporation, limited liability company, etc., etc.]_____ ("Assignor") and _____ALL CAPS_____, a _____[legal entity—Example: sole proprietorship, partnership, corporation, S corporation, limited liability company, etc., etc.]_____ ("Assignee"). Assignor and Assignee are collectively referred to herein as the "Parties."

RECITALS

A. Assignor and the City of Mountain View, a California charter city and municipal corporation ("City") are Parties to a certain Development Agreement regarding the _____ Project ("Project") dated as of _____, 20___, recorded in the Official Records of Santa Clara County, California, on _____, 20___, as Instrument No. _____ ("DA") and adopted by the City Council by Ordinance No._____.

[*INCLUDE IF ASSIGNOR NOT GOOGLE: If Google is not the current Assignor, replace "Assignor" in Recital A with "Google LLC, a Delaware limited liability company" and add a new recital describing assignment(s) from Google to this Assignor.*]

B. Except as otherwise specifically provided herein, all defined terms used in this Assignment shall have the meanings ascribed to them in the DA. This Assignment is governed by the provisions in Article 10 of the DA.

C. Assignor duly provided notice to City of Assignor's proposed assignment together with a copy of this Assignment instrument pursuant to Section 10.2 of the DA.

*****[SELECT ONE]*****

D. Assignor requested approval from City for the assignment to Assignee described herein, and City consented to such assignment, all pursuant to Section 10.1 of the DA.

OR

D. Assignor provided City documentation establishing that Assignee is a qualified Affiliated Party, and Assignor has the right to make the assignment to Assignee described herein, all pursuant to Section 10.1 of the DA.
*****[END OF SELECTION]*****

E. On the Effective Date (defined below), Assignor transferred to Assignee that portion of the Property legally described in Attachment 1, attached hereto and incorporated herein by reference (the "Assigned Property").

F. In conjunction with the transfer of the Assigned Property to Assignee, Assignor desires to assign to Assignee certain of Assignor's rights, duties, and obligations under the DA with respect to the Assigned Property, and Assignee desires to accept and assume certain of Assignor's rights, duties, and obligations under the DA with respect to the Assigned Property (collectively and as described and defined more particularly in Section 1 below, the "Rights and Obligations") subject to the terms, conditions and restrictions set forth in this Assignment.

AGREEMENT

NOW, THEREFORE, in exchange for the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Assignment and Assumption of Interest.**

a. Assignor hereby transfers, assigns, and conveys to Assignee the Rights and Obligations (as defined below). Assignee, for Assignee and Assignee's successors and assigns, hereby accepts the foregoing assignment, assumes all such Rights and Obligations, and expressly agrees for the benefit of City, to pay, perform, and discharge all such Rights and Obligations.

b. "Rights and Obligations" shall mean and include all of Assignor's right, title and interest in and to, and all obligations, duties, responsibilities, conditions, and restrictions under the DA with respect to the Assigned Property that: (1) apply exclusively to the Assigned Property; or (2) apply nonexclusively to the Assigned Property, but then only the extent proportionally allocable to the Assigned Property.

******[*OPTIONAL: Complete following Subsection (c) to the extent there are allocations of responsibility among portions of the Project that the City agrees can be specified as part of an assignment.*]******

c. Notwithstanding anything to the contrary herein:

(1) The Rights and Obligations shall not mean or include, and Assignee shall have no right or obligation with respect to _____, it being expressly understood that Assignor shall retain the obligation to _____.

(2) The Rights and Obligations shall include, without limitation (except for the limitations as expressly described below), and Assignee shall have rights or obligations with respect to:

(a) Only _____ percent (___ %) of the _____ Dollar ($_____) payment is required by DA Section _____; and

(b) DA Sections _____ and _____, of which obligations are tied to the Assigned Property;
*****[END OF OPTIONAL]*****

d. Assignee hereby acknowledges that the Assigned Property shall remain subject to all of the consequences and limitations set forth in Section 10.4 of the DA which may result from failure by other parties with an interest in the Project to satisfy requirements in the DA, including, without limitation, restrictions on the ability or timing to develop the Assigned Property.

2. **Effective Date.** Upon execution by Assignor, Assignee, and City (if City consent is necessary under the DA), the provisions of this Assignment shall be effective as of _____, 20___ (the "Effective Date").

3. **Rights and Remedies.** Subject to City's execution of the consent to this Assignment (if necessary under the DA), any default or breach by Assignor of obligations under the DA, regardless of whether such default or breach occurs before or after the Effective Date ("Assignor Breach"), shall not constitute a breach or default by Assignee under the DA. City shall look solely to Assignor for compliance with obligations under the DA other than the Rights and Obligations. An Assignor Breach shall not affect the Assigned Property and shall not cancel or diminish in any way Assignee's rights under the DA with respect to the Assigned Property, except as described in Section 10.4 of the DA and acknowledged by Assignee in Section 1.d of this Assignment.

4. **Assignee and Assignor Agreements, Indemnifications, and Waivers.**

a. Assignee represents and warrants and acknowledges and agrees for the benefit of City as follows:

(1) Assignee is a duly organized _____[legal entity]_____ organized within and in good standing under the laws of the State of _____ and authorized to do business in the State of California. Assignee has full right, power and lawful authority to undertake all obligations of Assignee as provided herein and execution, performance and delivery of this Assignment by Assignee has been fully authorized by all requisite actions on the part of Assignee.

(2) Assignee's execution, delivery, and performance of its obligations under this Assignment will not constitute a default or a breach under any contract, agreement, or order to which Assignee is a party or by which Assignee is bound.

(3) Assignee is not the subject of any bankruptcy proceeding.

(4) As of the Effective Date, Assignee owns fee simple title to the Assigned Property.

b. Assignor and Assignee each represents and warrants and acknowledges and agrees for the benefit of City as follows:

(1) City has not made, and will not make, any representation or warranty that the partial assignment and assumption of the DA provided for hereunder will have any particular tax implications for Assignor or Assignee.

(2) The allocations and provisions made in this Assignment were specifically negotiated and agreed to by Assignor and Assignee, and it is the responsibility of Assignor and Assignee (and not City) prior to execution of this Assignment to assess whether the allocations and provisions made in this Assignment fulfill Assignor's and Assignee's respective needs and purposes.

(3) Assignee and Assignor each hereby waives and releases and each hereby agrees to indemnify and hold City harmless from and against any claims, liabilities, or damages, including reasonable attorneys' fees and costs actually incurred arising out of or resulting from any tax consequences for Assignor or Assignee resulting from the allocations of Rights and Obligations under this Assignment and/or disputes related to whether the allocations and provisions made in this Assignment fulfill Assignor's and Assignee's respective needs and purposes.

5. **Governing Law; Venue.** This Assignment shall be interpreted and enforced in accordance with the laws of the State of California without regard to principles of choice of laws. Any action to enforce or interpret this Assignment shall be filed and litigated exclusively in the Superior Court of Santa Clara County, California, or in the Federal District Court for the Northern District of California.

6. **Entire Agreement/Amendment.** This Assignment constitutes the entire agreement among the Parties with respect to the subject matter hereof, and supersedes all prior written and oral agreements with respect to the matters covered by this Assignment. This Assignment may not be amended except by an instrument in writing signed by each of the Parties and consented to in writing by City.

7. **Further Assurances.** Each Party shall execute and deliver such other certificates, agreements, and documents and take such other actions as may be reasonably required to consummate or implement the transactions contemplated by this Assignment and the DA.

8. **Benefit and Liability.** Subject to the restrictions on transfer set forth in the DA, this Assignment and all of the terms, covenants, and conditions hereof shall extend to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.

9. **Rights of City.** All rights of City under the DA and all obligations to City under the DA arising on or after the Effective Date with respect to the Assigned Property which were enforceable by City against Assignor prior to the Effective Date of this Assignment shall be fully enforceable by City against Assignee from and after the Effective Date of this Assignment.

10. **Rights of Assignee.** As of the Effective Date, all rights of Assignor and obligations to Assignor under the DA with respect to the Assigned Property which were enforceable by Assignor against City prior to the Effective Date of this Assignment shall be fully enforceable by Assignee against City from and after the Effective Date of this Assignment.

11. **Release.** Except as set forth in Section 1 above, Assignor hereby relinquishes all rights under the DA with respect to the Assigned Property, and all obligations of Assignor under the DA with respect to the Assigned Property shall be terminated as to, and shall have no more force or effect with respect to, Assignor, except for those obligations specifically retained by Assignor in this Assignment.

12. **Attorneys' Fees.** In the event of any litigation pertaining to this Assignment, the losing party shall pay the prevailing party's litigation costs and expenses, including without limitation reasonable attorneys' fees.

13. **City as Third-Party Beneficiary.** City is an intended third-party beneficiary of this Assignment, and has the right, but not the obligation, to enforce the provisions hereof.

14. **Recordation.** Assignor shall cause this Assignment to be recorded in the Official Records of Santa Clara County, and shall promptly provide conformed copies of the recorded Assignment to City and Assignee.

15. **Address for Notices.** Assignee's address for notices, demands, and communications under Section 12.2 of the DA is as follows:

Assignee: _____
Attn: _____
_____
_____

16. **Captions; Interpretation.** The section headings used herein are solely for convenience and shall not be used to interpret this Assignment. The Parties acknowledge that this Assignment is the product of negotiation and compromise on the part of both Parties, and the Parties agree that since both have participated in the negotiation and drafting of this Assignment, this Assignment shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

17. **Severability.** If any term, provision, condition, or covenant of this Assignment or its application to any Party or circumstances shall be held by a court of competent jurisdiction, to any extent, invalid or unenforceable, the remainder of this Assignment, or the application of the term, provision, condition, or covenant to persons or circumstances other than those as to whom

or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law unless the rights and obligations of the Parties have been materially altered or abridged thereby.

18. **Counterparts.** This Assignment may be executed in counterparts, each of which shall, irrespective of the date of its execution and delivery, be deemed an original, and the counterparts together shall constitute one and the same instrument.

19. **No Waiver.** Failure by a Party to insist upon the strict performance of any of the provisions of this Assignment by any other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Assignment thereafter.

20. **Amendments.** Any amendments or modifications to this Assignment must be in writing, signed by duly authorized representatives of each of the Parties hereto and consented to by the City in writing, and recorded in the Official Records of Santa Clara County, California.

21. **Authority.** Each person executing this Assignment represents and warrants that such person has the authority to bind the respective Party to the performance of the Party's obligations hereunder and that all necessary board of directors, shareholders, partners, members, managers, and other approvals have been obtained.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date first set forth above.

"ASSIGNOR": __ALL CAPS___, _____[legal entity]_____	"ASSIGNEE": ALL CAPS___, _____[legal entity]_____
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

CONSENT TO PARTIAL ASSIGNMENT AND ASSUMPTIONS OF RIGHTS AND OBLIGATIONS UNDER DEVELOPMENT AGREEMENT

The City of Mountain View, a California charter city and municipal corporation, hereby consents to the assignment and assumption described in the foregoing Assignment.

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

By: _____
City Manager

Print Name: _____

Dated: _____

APPROVED AS TO CONTENT:

_____
Community Development Director

Print Name: _____

FINANCIAL APPROVAL:

_____
Finance and Administrative Services Director

Print Name: _____

APPROVED AS TO FORM:

_____
City Attorney

Print Name: _____

EXHIBIT M

FORM OF DECLARATION OF RESTRICTIONS AND COVENANTS ON LAND

The Master Plan requires two different types of restrictions/covenants to be recorded on affected parcels within the Property for zoning compliance, including:

1. Notice of Development Restrictions to acknowledge development restrictions applicable to the subject property, such as CC&R's.

2. Covenant Regarding Active Use Subsidized Space to acknowledge any Active Use Space that is subject to the Developer's Small Business Diversification and Nonprofit Inclusion Program.

These documents are to be prepared in conformance with the form and content enclosed and shall include exhibits with the legal property description of the property, the property map and/or building footprint, and associated notary forms from the City Manager, Property Owner/Owner Applicant, and/or Declarant, to be recorded in the Official Records. Minor edits or adjustments are permitted to fulfill the details of the particular subject property, signatories, site-specific requirements, or grammatical errors.

APN: _____

NOTICE OF DEVELOPMENT RESTRICTIONS

NOTICE IS HEREBY GIVEN by the City of Mountain View, a California charter city and municipal corporation, that the certain real property commonly identified as _____, Mountain View, California, and more particularly described in Exhibits A and B, the attached legal description and Assessor's Parcel Map, respectively attached hereto and incorporated herein ("Property"), is developed as a _____ with _____ gross square feet of ground-floor commercial space located within the Middlefield Park Master Plan approved by Resolution No. _____ in the East Whisman Precise Plan ("Precise Plan") zoning district pursuant to the Findings Report dated _____ for Zoning Permit No. _____. Said Property is subject to CC&Rs and to certain development and use restrictions and conditions in the Middlefield Park Master Plan and Zoning Permit, which regulate the development and use of the Property, and the terms of the Development Agreement dated _____, 202__, and recorded on _____, 202_ in the Official Records of the County of Santa Clara as Document No. _____ (the "Development Agreement)". These restrictions include, but are not limited to, a restriction on the allowed uses of the ground floor commercial space, which are considered exempt from allowable floor area. The ground floor commercial space shall be limited to the following uses:

(a) **Small Business and Nonprofit Uses**. These uses are small businesses or nonprofit organization uses, including, but not limited to: educational uses, cultural uses, and small businesses as further defined herein. Small businesses are generally defined as a business with annual proceeds which do not exceed an average of $2,000,000 annually for the past five (5) years, or $5,000,000 for a market or grocer, or as otherwise defined in the Small Business Diversification & Inclusion Program dated _____, 202_, as may be amended from time to time. Nonprofits are 501(c)(3) organizations or have fiscal sponsorship from an established 501(c)(3) organization. Any such small business or nonprofit must serve the local Mountain View community and not exceed 99 employees.

(b) **Neighborhood Commercial Uses**. These are neighborhood commercial uses as listed in the Precise Plan's Allowable Land Use Table. Residential and office amenity spaces, such as, but not limited to, a fitness center, that are available for public use are also allowed.

(c) **Community Facility Uses**. These are uses that are comparable to community facilities and other uses that the City provides to the Mountain View community, such as, but not limited to, public library, community meeting room, and recreation center open to the general public.

(d) **Childcare Facility**. A facility as defined in Chapter 36 (Zoning), Article XVII (Definitions) of the City Code.

Any use inconsistent with the above listed uses is not allowed and constitutes a violation of the development restrictions on the property, which restrictions run with the land and apply to all successors in interest and assigns.

Said property is owned by _____. For further information, please contact the Community Development Department of the City of Mountain View at 650-903-6306 or 500 Castro Street, P.O. Box 7540, Mountain View, California, 94039-7540.

This NOTICE of Development Restrictions may only be removed and the restrictions released by a document signed and recorded by the City Manager of the City of Mountain View, California.

Executed this _____ day of _____ 20____, in Mountain View, California.

CITY OF MOUNTAIN VIEW:

By:
_____

City Manager

_____
Printed Name

APPROVED AS TO CONTENT:

_____
Community Development Director

_____
Printed Name

APPROVED AS TO FORM:

_____
City Attorney

_____
Printed Name

PROPERTY OWNER:
_____ ___

_____
Signature

_____
Printed Name

OWNER/APPLICANT:

_____
Signature

_____
Printed Name

APN: _____

COVENANT REGARDING ACTIVE USE SUBSIDIZED SPACE
(COVENANT RUNNING WITH THE LAND)

This Covenant Regarding Active Use Subsidized Space ("Covenant") is made by _____, a ____[legal entity type]_____ ("Declarant") and the CITY OF MOUNTAIN VIEW, a California charter city and municipal corporation ("City"), to be effective on the date this Covenant is signed by Declarant and City and recorded in the Official Records of Santa Clara County, California (the "Effective Date").

RECITALS

A. WHEREAS, Declarant is the fee owner of the parcel of real property in the City of Mountain View, County of Santa Clara, State of California, currently bearing Santa Clara County Assessor's Parcel No. _____, as more particularly described in Exhibit A, attached hereto (the "Land") and the building (the "Building") and other improvements thereon (the Land, together with the Building and other improvements thereon, being collectively, the "Property" whose location is shown in Exhibit B); and

B. WHEREAS, on _____, the City Council of City approved, subject to certain conditions, the Middlefield Park Master Plan per Resolution No. _____ ("MPMP") and the Development Agreement approved by Ordinance No. _____ and recorded on _____, 202_, in the Official Records of the County of Santa Clara as Document No. _____ (the "Development Agreement" and collectively with the MPMP, the "Existing Approval") and whereby on _____, the Zoning Administrator of City approved, subject to certain conditions, Zoning Permit No. _____ with respect to the development of certain real properties owned by Declarant (the "Subsequent Approval"); and

C. WHEREAS, as part of the application submitted to City for the Subsequent Approval, Declarant applied for both nonresidential and residential Floor Area Ratio ("FAR") Bonuses ("FAR Bonus") as described in Section 6.1 of City's East Whisman Precise Plan (the "Precise Plan"). To satisfy one (1) of the requirements to obtain the FAR Bonus, Declarant agreed to provide a community benefit which includes supporting or subsidizing small, local businesses, nonprofits, community facilities, and qualified neighborhood commercial uses as described in the Precise Plan. In furtherance of this requirement, the City imposed Condition of Approval No. _____ of the Existing Approval and Condition of Approval No. ____ of the Subsequent Approval, for the Declarant is recording this Covenant to satisfy these conditions.

COVENANT

NOW, THEREFORE, Declarant and City agree as follows:

1. **Declaration of Active Use Subsidized Space.** Declarant hereby declares and agrees, on behalf of Declarant and all subsequent fee title owners of the Property (each, an "Owner"), that during the Term (defined in Section 2 below):

(a) Owner shall give preference, to the extent permitted by law, for the leasing of the Active Use Subsidized Space (as defined below) within a portion of the Building located at ____[*enter address*]____ to qualified tenants under the Small Business Diversification & Non-Profit Inclusion Program ("Small Business Program") as detailed in the Development Agreement, and which may be updated from time to time. The portion of the Building containing the Active Use Subsidized Space is shown in Exhibit "C" attached hereto (the "AUSS");

(b) the lease rate to be charged to a tenant of the AUSS shall be calculated in the manner described in Section _____ of the Development Agreement *[for ease of reference, relevant provisions of DA can be restated in this Covenant rather than being cross-referenced]*;

(c) the Owner is responsible for payment of all related City development permit, processing, and impact fees associated with the initial building permit and occupancy which establishes the tenant space;

(d) the Owner will also provide the initial tenant under its initial lease of AUSS an allowance in the amount calculated pursuant to Section _____ of the Development Agreement.

(e) Owner may also provide additional funding, support and services to the qualified tenant per the Small Business Program, as deemed appropriate by the Owner.

For ease of reference certain definitions from the Development Agreement are restated below:

"Active Uses" is defined, and shall have the meaning set forth, in Section 1.2 (Terminology) of the Master Plan.

"Active Use Space" means all ground floor space in Residential Buildings, the Ellis Community Pavilion, and Parking Structure P2, that is in each case designed or otherwise intended for occupancy by Active Uses, containing up to 50,000 gross square feet ("GSF") of space as described in Table 5.3.2 of the Master Plan. For the avoidance of doubt, Active Use Space includes the Required 5,000 Sq. Ft. Space.

"Active Use Subsidized Space" means a minimum of 22,000 square feet of Active Use Space that meets the requirements of the Approvals and this Agreement regarding Developer's

obligations to provide subsidized space and support occupants of such space in accordance with the Small Business Diversification and Non-Profit Inclusion Program, being collectively, the Active Use Subsidized Space within Phase 1 (R1, R2 and Ellis POPA Open Space) and/or Phase 3 (R3, R4b, and R5). The provisions of this Agreement regarding Active Use Subsidized Space shall apply to such space whether it is located in Phase 1 or Phase 3, unless the terms clearly limit such application to one phase. For the avoidance of doubt, Active Use Subsidized Space excludes (i) the Required 5,000 Sq. Ft. Space, and (ii) the amount of any Active Use Space developed in excess of the Small Business Diversification and Non-Profit Inclusion Program requirements. For the avoidance of doubt, a grocery store may occupy an Active Use Subsidized Space or may be in other Active Use Space.

2. **Term.** This Covenant shall continue in effect until Developer fulfills all of its Active Use Subsidized Space obligations under the Development Agreement, regardless of tenant turnover. The "Term" of this Covenant shall commence on the Effective Date and shall automatically expire and be of no further force or effect at the end of the day on the later of: (i) the date that ten (10) years following Completion (as defined in the Development Agreement) of the AUSS, and (ii) expiration of the term of the Development Agreement.

3. **Covenant Running with the Land.** Declarant hereby declares Declarant's express intent that the covenants contained herein are covenants running with the land and apply to and bind each Owner of the Property so long as such Owner owns fee title to all or any portion of the Property during the Term. The covenants contained herein shall, without regard to technical classification or designation, be binding upon each Owner during the period of Owner's fee ownership during the Term. The Covenant applies to any tenant occupying the AUSS for the Term.

4. **Amendments.** This Covenant may not be amended or terminated during the Term without the written consent of the then-fee owners of the Property and City.

5. **Miscellaneous.** No breach of any of the covenants or other provisions contained in this Covenant shall defeat or render invalid the lien of any third-party mortgage, deed of trust, or similar security instrument made in good faith and for value and encumbering all or any portion of the Property affected by this Covenant; but all of the covenants and provisions shall be binding and effective against any Owner of the Property or portion thereof affected by this Covenant whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure, or similar action. The covenants and provisions of this Covenant shall not be deemed to constitute a dedication for public use or to create any right in the general public. This Covenant shall be governed and construed in accordance with the laws of the State of California, without regard to choice of law principles. The captions or headings of the Sections in this Covenant are for convenience of reference only and shall not control or affect the meaning or interpretation of any of the terms or provisions of this Covenant.

[SIGNATURES BEGIN ON NEXT PAGE]

"CITY":
CITY OF MOUNTAIN VIEW,
a California charter city and municipal corporation

By: _____
City Manager

_____
Printed Name

APPROVED AS TO CONTENT:

_____
Community Development Director

_____
Printed Name

APPROVED AS TO FORM:

_____
City Attorney

_____
Printed Name

"DECLARANT":
_____

_____
Signature

_____
Printed Name

EXHIBIT N

MASTER ENCROACHMENT AGREEMENT FOR DISTRICT UTILITY SYSTEM TERMS

This exhibit summarizes key terms to be included in a future Master Encroachment Agreement (MEA) between the Parties should the Developer pursue a district system in the Project. The Public Works Director, or designee, shall provide Developer with a draft of the Master Encroachment Agreement as part of City's first written response to the first zoning permit application that includes the District Utility System (including the District Systems Implementation Plan as described in the District Systems Concept Plan). The MEA will be in a standard agreement template form approved by the City Attorney. City and Developer shall execute the Master Encroachment Agreement, following approval of the zoning permit and submission of Building Permit application that includes the District Utility System, but prior to issuance of that Building Permit

Capitalized terms that are used but not defined in this exhibit shall have the meaning given to such terms in the Development Agreement.

- **Scope of Agreement –** All rights granted under the MEA to Developer may be exercised at Developer's sole cost and expense, subject to the terms and conditions of the MEA, including the prior and continuing right of City to use all parts of the public right-of-way and City-owned land exclusively or concurrently with any other person or entity, and subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may, now and in the future, affect the right-of-way and City-owned land.

- **Other Private Rights –** Any future City grant of private rights affecting the Developer's rights under the MEA shall be consistent with, and shall not unreasonably interfere with, Developer's district systems improvements, except where Developer reasonably agrees to such interference.

- **Excavation Permit** – Developer shall apply for an Excavation Permit for the installation and construction of each phase of development with installation of the district system ("district system") within the public right-of-way or on City-owned parcels.

- **Improvements –** City to grant limited right to use portions of the public right of way and limited portions of City-owned property to locate the district system in the same or substantially similar manner as shown in the Existing Approvals and detailed further in Subsequent Approvals. The district systems will be permitted to encroach a total of approximately 15,000 square feet into certain portions of Parcels Park 1, 2 and 3, the parcels as shown on the Vesting Tentative Map. Multiple crossings (perpendicular and non-perpendicular) of the public right-of-way on Logue Avenue, Clyde Avenue, and Maude Avenue are permitted to allow for a continuous district system. The district system must maintain minimum horizontal and vertical clearances from City infrastructure in the right-of-way in accordance with applicable City design standards and specifications. The

final district system design will be shown on plans attached to each subsequently approved Excavation Permit for each phase of system installation.

- **Future Exhibits** – The MEA will allow for planned future exhibits to be added from time to time. Once an encroachment location(s) is included in an Improvement Plans/Excavation Permit, with the associated building permit application submission, and the exact location(s) is known, a new exhibit will be created, approved and executed by the parties, and attached and incorporated into the MEA. An exhibit will include a plat and legal description and a cost estimate of the work within the public right-of-way or on a City-owned parcel(s). Each exhibit will be added to the agreement and the agreement, in its entirety, will be recorded with the County. No other changes to the agreement will be allowed by either Party with the future exhibits; otherwise, any other change constitutes an Amendment to the Master Encroachment Agreement.

- **Securities** – The following securities are required: (a) prior to issuance of the Excavation Permit for said work, Developer must provide to the City a cash security (100% of the cost of improvements in the public right-of-way or on City-owned land) securing the proposed improvement(s) in the public right-of-way or City-owned parcel(s), which security shall be held for the life of the encroachment; and (b) prior to issuance of a building permit, Developer is to provide a security to the City as required per the Improvement Agreement to be held during construction of the improvements in the public right of way in accordance with City Code.

- **Terminology/Definitions** – In addition to any important terminology used in reference of the district system which may warrant definition, the MEA shall include clear terminology and definitions for: (a) the responsible party and single point-of-contact for the City for the district system operation ("responsible party"), (b) qualified operator(s) of the system, and (c) joint qualified operator(s) and owner(s) of the district system.

- **Nonexclusive Rights** – Through the MEA, the City will grant nonexclusive rights to Developer to construct and maintain a district system in a defined footprint within the public right of way and on City-owned property. These rights do not constitute a deed or grant of an easement or any other real property interest by the City to the Developer.

- **Permitted Uses –** Developer represents, warrants, and covenants the district system installed will be utilized for the sole purpose of providing identified services to private customers and not to provide services outside of the defined Master Plan area without authorization and approval by the City. Developer shall be responsible for all costs associated with construction, installation, maintenance, and use of the district system. Developer is obligated to obtain any additional required authorizations, approvals, or permits from any City department, board, commission, or other governmental agency that has authority over the Developer's activities involving use of the public right of way and City land.

- **City Access and Form of Notification** – City or City's Agents may enter onto City land and public right of way at all times. Developer shall be a member of the regional

notification center for subsurface installations (Underground Services Alert) and shall field-mark, at its sole expense, the locations of its underground facilities upon notification in accordance with the requirements of Section 4216 of the State of California Government Code, as it now reads or may hereinafter be amended. This will be the form of notification for any work proposed in or near the MEA area.

- **Indemnity –** Developer shall indemnify, defend, protect, and hold City harmless from and against any and all claims, liabilities, penalties, forfeitures, losses and/or expenses related to or arising out of the encroachments or activities under the MEA by Developer or its contractors, agents, officers, employees or invitees, except to the extent such claims result from the City's gross negligence, recklessness, or willful misconduct.

- **Insurance –** Developer to provide minimum insurance requirements for the term of the MEA at rates and in a form required by the City at time of submittal for the Excavation Permit, which may minimally include, but not be limited to, commercial general liability insurance, automobile liability insurance, pollution liability insurance, and workers compensation insurance. The City updates insurance requirements from time to time.

- **Continuity of Service –** Developer will be required to provide continuous district system services to all buildings where services are provided.

- **Cease of Service –** Should Developer cease providing one or more district system services entirely, either by election or poor performance, and without any comparable replacement or substitute district system service, then Developer must provide the City 180 days' written notice together with such plans as are necessary for the required City utility system connection or standard public utility connections available in the City, and plans for removal of the district system improvements and restoration of public rights-of-way and City property. Following City approval of Developer's installation and removal plans, completion of the new connections by Developer, and City verification that the substitute City services are operating properly, Developer may terminate the MEA and discontinue system operations as to the affected district system. Termination requires removal of the district system infrastructure for the discontinued service in the public right-of-way and on City-owned property, at no cost to the City; provided, City in its sole discretion may allow some or all of the district system improvements to remain in place. The public right-of-way and City property shall be restored to the same finished condition as exists immediately prior to removal. Developer shall commence removal and restoration within thirty (30) days after all the City substitute services required to replace the district system services are operational, and shall complete removal and restoration within one hundred eighty (180) days, or such longer period of time as may be reasonably approved by the Public Works Director.

- **No Interference –** Developer shall not interfere in any manner with the existence and operation of any other public right-of-way, City infrastructure, public utilities, or City-owned land than explicitly identified in the Excavation Permit scope of work. Any future City grant of private rights for use of public rights-of-way or City land shall, to the extent

allowed by Applicable Law, not unreasonably interfere with Developer's district systems improvements, except where Developer reasonably agrees to such interference.

- **Interface with Future Bridge –** The Developer retained an engineering design firm to prepare a conceptual study for a proposed above-ground pedestrian-bicycle bridge to cross the VTA light rail corridor located on Parcels Park 1 and 2 as shown on the Vesting Tentative Map, entitled "Structure Conceptual Design Memorandum - East Whisman / Bicycle Pedestrian Overcrossing" by Biggs Cardosa Associates, dated September 13, 2022 and on file with the City. The study confirmed whether the proposed Bridge Open Space site is adequate in size and could reasonably accommodate a utility encroachment for a District Utility System serving the Project in tandem with future bridge infrastructure, in accordance with current VTA and accessibility requirements. As described in Section 5.3.3 of the Development Agreement, the design of the bridge and structural configuration are not known at this time. The City will make Good Faith Efforts during the bridge design process to minimize adverse impacts on the Project and district system improvements and collaboratively work with Developer to address any potential conflicts. However, the district systems shall not materially limit the use of City property nor limit, interfere with, or prevent the City's development of a future above-grade bicycle and pedestrian bridge over the VTA light rail tracks.

- **Maintenance/Repair –** Developer shall, at all times, maintain the area(s) of the encroachment in safe condition and good appearance to the reasonable satisfaction of City's Public Works Director. Any repair or maintenance that requires disrupting the encroachment area(s) (e.g. dig out and repair) requires submittal and approval of an Excavation Permit.

- **Removal and Relocation of Sites** – Upon receiving written notification from the City, Developer shall remove or relocate, without cost or expense to City, any district systems infrastructure installed, used, and maintained under the MEA or subsequent Excavation Permits within a given portion of the public right-of-way or City-owned land if the City or a regional, county, state or federal governmental agency determines to use the right-of-way or City-owned land for a public purpose, or the installation is declared unlawful by a court of competent jurisdiction. For purposes of the MEA or any subsequent Excavation Permit authorized under the MEA, the following shall not constitute a "public purpose" that would merit removal or relocation of any district systems infrastructure: (1) subsequent encroachments proposed by private property development projects, whether below, at or above-grade; or (2) subsequent subsurface private or franchised utility infrastructure, unless required by a franchise agreement or otherwise authorized by State or Federal agencies, or Applicable Law. Removal and any associated restoration of the right-of-way or City-owned land shall be completed within 180 days of City's notification, or a longer period that may be determined by the Public Works Director in his or her reasonable discretion subject to time limits that may be imposed by the new required use. City will include the evaluation of any proposed alternative location(s) for district systems infrastructure necessitated by this removal as part of the City's environmental analysis for other planned improvements, if any such environmental analysis is required.

- **Comply with Applicable Laws –** Developer and the district system must comply with all Applicable Laws.

- **Assignments** – Developer may assign the district system improvements and associated rights and obligations in the MEA as follows:

    - Assignment and Assumption Agreement: Any Assignment will require execution of an "Assignment and Assumption Agreement" which evidences that the assignee has assumed all rights and obligations of the assignor pertaining to the district system and the District Systems Transactional Documents (defined in the Implementation Plan). No Assignment shall be effective until the assignor or assignee provides an executed copy of the Assignment and Assumption Agreement to the Public Works Director. Developer may not partially assign the MEA. Regardless of the ownership or components of the district system, Developer shall identify a single responsible party with responsibility for compliance with the obligations of the MEA.

    - Evidence of Qualified Operator: Concurrent with the submittal of the executed Assignment Assumption Agreement, the assignor or assignee shall provide notice and documentation to City's Public Works Department confirming the assigned district system will continue to be operated by a Qualified Operator subsequent to the Assignment (as defined in the Implementation Plan). No Assignment shall be effective until the assignor or assignee provides the documentation required pursuant to this condition.

    - Permitted Assignments: Developer may assign to (i) an Affiliated Party; (ii) Lendlease; (iii) any Lendlease Affiliate; (iv) any entity in which Developer, an Affiliated Party, Lendlease, or any Lendlease Affiliate are members or hold an interest so long as any of the foregoing parties has Control of such entity (v) any third-party assignee that is an owner of the district system, with appropriate operational and asset management capabilities, directly or via an operating partner; or (vi) a Project master commercial association properly organized under Applicable Law, with CC&Rs, reserves, resources and funding arrangements all approved by the City in its reasonable discretion. Any such assignments other than to a master commercial association as described in the preceding clause (vi) would not require City's consent but would require thirty (30) days prior written notice to City of such assignment; if a third-party assignee as described in the preceding clause (v) is to be an operator of the district system, then written notice to the City must also include documentation that the assignee meets minimum Qualified Operator service requirements. Any assignment of permits or other regulatory obligations under federal, state, regional, or local laws must be in compliance with these laws and any other agency requirements.

EXHIBIT O

NON-DISTRICT SYSTEMS ENCROACHMENT AGREEMENT TERMS

The below key terms focus on establishing adequate timeframes for removal and/or relocation of any encroachments (not including District Systems ("DS")). The below text is intended to be integrated into any standard Encroachment Agreements required in the Middlefield Park Master Plan ("MPMP"). (Any standard Encroachment Agreement would likely be required as a future PCP condition of approval.)

1. **Removal and Relocation Timing.** If the City determines that removal or relocation of the improvements installed in the public right-of-way is necessary for governmental purposes, activities, or City installations, said removal or relocation shall be completed within one hundred and eighty (180) days of notification by City, or such later time as may be approved by the Public Works Director in their sole and reasonable discretion, to be no less than one hundred eighty (180) days. City may immediately commence activities to remediate any emergency situation, including removal or relocation of improvements, and shall issue Developer written notice as reasonably practicable. Upon adequate justification, City may require removal or relocation on shorter notice in a non-emergency situation, but in no case less than thirty (30) days' notice.
2. **Revocation of Encroachment Agreement.** If the Public Works Director revokes the encroachment agreement in his/her reasonable discretion for governmental purposes, activities, or City installations, the improvements in the public right-of-way shall be removed within one hundred and eighty (180) days of such request, or within a time frame reasonably determined by the Public Works Director, to be no less than one hundred eighty (180) days.
3. **Discontinuance of use of improvements.** If Developer ceases to use the improvements located in the public right-of-way, Developer shall notify City of Developer's intent to remove or abandon the improvements within one hundred and eighty (180) days of providing notice of nonuse to the City, or within a time frame reasonably agreed to by Developer and City, to be no less than one hundred eighty (180) days.
4. **Indemnification**: except for the Master Encroachment Agreement governing District Systems, all encroachment agreements entered into for the MPMP shall include an indemnification provision that is substantially as follows: Developer, jointly and severally, for itself, its successors, agents, contractors, and employees, agrees to indemnify, defend (with counsel acceptable to City), and hold harmless City, its City Council, officers, employees, and agents and any successors to City's interest in the property from and against any and all claims, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense (collectively, the "Losses") arising directly or indirectly, in whole or in part, out of or from the construction, implementation, operation, maintenance, repair or removal of the encroachments, or other acts or omissions of Developer or any of Developer's employees, contractors, subcontractors, agents or representatives (individually a "Developer Party" and collectively, "Developer Parties") under this

Encroachment Agreement, failure of Developer Parties to comply with the terms of this Encroachment Agreement, or arising out of the acts or omissions of Developer Parties in connection with their activities under this Encroachment Agreement on or off the site of the encroachment, except to the extent such Losses are caused by the gross negligence, recklessness, or willful misconduct of City or its City Council, officers, employees, and agents and any successors to City's interest in the property.

EXHIBIT P

FORM OF NOTICE OF COMPLETION AND TERMINATION

This document shall include exhibits for legal property description, property map and/or relevant building/floor plans, and associated notary forms from the City Manager and Developer, to be recorded in the Official Records. Minor edits or adjustments are permitted to fulfill the details of the particular subject property, signatories, site-specific requirements, or grammatical errors.

(Space above this line reserved for Recorder's use only)

APN: _____

NOTICE OF COMPLETION AND TERMINATION

NOTICE IS HEREBY GIVEN of Completion of Building and Associated Obligations ("Notice") by and between the City of Mountain View, a California charter city and municipal corporation ("City"), and _____, a ____[legal entity type]_____ ("Developer") to be effective on the date this Notice is signed by City and Developer and recorded in the Official Records of Santa Clara County, California.

1. The City and Developer entered into certain Development Agreement dated _____ and recorded in the Official Records of the County of Santa Clara on _____, as Document Number _____ (the "Development Agreement"). Capitalized terms used in this Notice that are not defined shall have meaning given to such terms in the Development Agreement.

2. Under Section 10.7 of the Development Agreement, when one or more buildings or other improvements on a legal parcel have been Completed, have received a Certificate of Occupancy, and all of the Required Exactions, Community Benefits and Public Benefits, and any other obligations and requirements under the Developer Agreement tied to the specific building(s) or legal parcel have been provided or otherwise satisfied, in accordance with the Development Agreement (collectively "Obligations"), then the City and Developer shall execute and record a notice of completion as it relates to the applicable building or improvements.

3. The City confirms that ___[*the building known as…. and/or the improvements known as….*], located on certain real property commonly identified as [enter property address], Mountain View, California, and more particularly described in Exhibits A and B, the attached legal description and Assessor's Parcel Map ("Affected Property"), respectively, together with all of the Obligations associated with ___[*that building and/or those improvements*] through the Development Agreement, have been completed in accordance with the Development Agreement. The only remaining Obligations are those set forth in separate recordable documents, including the _____ *[Insert POPA Agreement, Covenant Regarding*

Subsidized Ground-Floor Commercial Space or any other agreement setting forth ongoing obligations] (collectively, the "Continuing Agreement"] which shall run with the land and continue to be binding with respect to the [*building and/or improvements*] and Affected Property and to any and all parties having or later acquiring any interest in the Affected Property, notwithstanding the recordation of this Notice.

Executed this _____ day of _____ 20____, in Mountain View, California.

CITY OF MOUNTAIN VIEW:

By: _____
City Manager

_____
Printed Name

APPROVED AS TO CONTENT:

_____
Community Development Director

_____
Printed Name

APPROVED AS TO FORM:

_____
City Attorney

_____
Printed Name

DEVELOPER:

_____

_____
Signature

_____
Printed Name