February 22, 2022

Mr. Edgar Maravilla, Senior Planner
Planning Division
Community Development Department
City of Mountain View
500 Castro Street
Mountain View, CA 94041

Re: Transmittal of Material requested for Study Sessions
Public Storage Redevelopment of Existing Facility
1040 Terra Bella Avenue
PL2021-170&171

Dear Mr. Maravilla:

As requested, this letter includes information, documents and background related to the direction we are seeking from the EPC and City Council on the following topics:

- Approval to move forward with the current design of one 4 story building and one 6 story building in lieu of two 5 story buildings
- Support for current architectural design
- Land contribution and Community Benefit valuation
- Confirmation of Housing fee waiver
- Development Agreement basic terms

Project Background

On August 25, 2020, the Mountain View City Council authorized staff to consider the joint application for redevelopment of the Public Storage (PS) self-storage facility and construction of an Alta Housing (AH) affordable housing facility at 1020-1040 Terra Bella Avenue.

The project site includes an existing 188,890 SF self-storage facility owned by Public Storage (PS) and a 20,618 SF property owned by Alta Housing (AH). The proposed project would include Public Storage's contribution of a portion of their existing property with a net site area of 24,531 SF to AH. The additional property will allow AH to increase the number of affordable housing units from 56 units to 108 units and to provide a significant community benefit.

The land identified for contribution by PS contains valuable frontage on Terra Bella. By facilitating residential development along the street-frontage, PS and AH will help foster a pedestrian-friendly environment within the Terra Bella neighborhood. The PS project would be located behind the AH project and adjacent to the freeway, with the PS project creating an attractive buffer between the freeway effects and the future residents of the AH project. See **Attachment 1** for an updated Project Description and **Attachment 2** for the existing and proposed site areas.

Justification for change in building heights

On April 19, 2021, with AH, a joint informal application was submitted for rezoning, a General Plan designation change, a General Plan text amendment as well as individual applications for Planned Community Permits. This informal application and the consequent full application submittal on August 23, 2021, depicted a revised design of one 6 story building and one 4 story building from the gatekeeper reviewed design of two 5 story buildings.

On September 23, 2021, PS received staff comments on the full submittal. At that point, meetings with staff were set up to clarify the comments including discussions on the architectural design. On November 11, 2021, a meeting was held with City staff and PS was informed that design of one 6 story building and one 4 story building is different than the originally approved Gatekeeper with two 5 story buildings and that direction from the EPC and City Council would be needed before proceeding.

In order to maintain storage units for existing customers and facilitate the land transfer, Public Storage has always proposed that the project would be built in two Phases. Phase I would demolish the existing office and storage buildings on the land to be donated along with a portion of the storage buildings on the remaining property. Building 1 will be constructed on the cleared property, then when Building 1 is fully occupied, and depending on market conditions, the remaining existing storage units will be demolished, and the second new Building 2 constructed.

After a detailed study of this process, Public Storage determined that the only option to make the phases economically feasible is to construct a larger six story Building 1 on the west side of the property in Phase I, and a smaller four-story Building 2 on the east side of the property in Phase II, instead of two five story buildings as originally presented at Gatekeeper. This is for several reasons. About two-thirds of the existing eighteen fully occupied self-storage buildings need to be demolished for the land transfer to AH and construction of Building 1. To offset that loss in income to PS and because of site configuration and access available to each portion of the property, Phase I Building 1 was increased in area, and Building 2 in Phase II was consequently reduced in size. As shown below, the total area for the PS project will be slightly smaller and the FAR slightly reduced from the drawings proposed at Gatekeeper.

	Gatekeeper	Current proposal
Total building area	441,185 SF	408,964 SF
Maximum height of buildings	69'	63'-3" and 84'-7"
Number of stories	5 story/ 5 story	4 story/6 story
FAR	2.63	2.49

We believe that the revised plan is consistent with the gatekeeper proposal and compatible with the Terra Bella neighborhood.

Project Architecture

During the past year, Public Storage has been working with staff in response to extensive comments on the building architecture. The current proposal has significantly more design features, varied materials, glass, and change in horizontal and vertical projections than the gatekeeper proposal. Although it is a warehouse building with no windows to the interior except at the ground floor retail office, customer lobbies and manager's apartment, the revised architecture will attractively blend with the surrounding industrial, office, and residential buildings. Only one short façade of each building has frontage on a public street. The longest façade of each building is against the elevated freeway ramp. Please see the drawing package included with this submittal.

Although sign approval is not part of Mountain View's entitlement process, signage is an important part of the proposed project for Public Storage. Subsequent to the property transfer, PS will no longer have frontage along Terra Bella Avenue and the new buildings will be located behind the Alta Housing Project. Due to the layout, signs for PS are crucial. Areas for signs have been identified on the buildings. PS will submit a sign application at the appropriate time.

Development Agreement

Public Storage originally requested approval of a ten-year Development Agreement in order to lengthen

the entitlement period beyond the allowed entitlement length of two years. The longer time period allows for development of the new self-storage facility in two phases. After entitlement approval, the Phase I six story Building 1 construction documents will be completed and permitted, and the building constructed. Building 1 will become occupied, then the Phase II four story Building 2 construction documents will be completed, permitted and the building constructed, with exact timing based on market conditions.

At staff's request, the proposed entitlement length has been shortened from a proposed ten years to seven years. In addition, staff has requested that a public benefit fee be paid to process the Development Agreement. In order to proceed with the project, Public Storage requests confirmation of the basic terms of the Development Agreement. A draft term sheet and sample Development Agreement are included in **Attachment 5.**

Community Benefit and Land Donation Valuation

Staff has requested that the community benefits of the project and the land donation valuation be provided in detail. See **Attachment 3** for more information.

Housing Fee Waiver

The Mountain View Municipal Code provides for a waiver of the Housing fee. Please see **Attachment 4** for details on how the proposed project is eligible for the waiver.

Thank you for your time and consideration reviewing this request for a study session. We are excited about the opportunity to provide new affordable housing and redevelopment in the Terra Bella community and the City of Mountain View. If you have any questions or need additional information, please do not hesitate to call or e-mail Bryan Miranda, bmiranda@publicstorage.com, (714) 338-1262 x3158, or Rose Bacinski, Bacinski & Associates, (760)757-7673.

Sincerely,

Bryan Miranda, Regional Vice President
Public Storage

Enclosures
Attachment 1: Public Storage Project Description
Attachment 2: Land exchange
Attachment 3: Land Donation background valuation
Attachment 4: Housing Impact fee waiver eligibility
Attachment 5: Draft Development Agreement Term Sheet and sample agreement

Cc: Stephanie Williams, City of Mountain View
Rebecca Shapiro, City of Mountain View
Ellis M. Berns, E Berns Consulting, LLC
Rose Bacinski, Bacinski & Associates

Attachment 1
Public Storage Project Description

Revised 2.10.22

Summary

Alta Housing (AH) and Public Storage (PS) own adjacent properties on Terra Bella Avenue and have agreed to a property transfer to facilitate more robust residential and industrial development. PS currently owns approximately 4.3 Acres and AH owns approximately .5 AC. PS has agreed to transfer approximately .5 acres of land to AH**,** which will result in an increase in affordable housing units from fifty-six units to 108 units that provide a significant community benefit. PS plans to demolish the existing eighteen single story storage buildings totaling 77,418 SF and redevelop the remaining 3.77 AC personal storage facility. The project will include construction of two buildings (six and four stories) totaling 408,964 SF in two phases, approximately sixty-three and eighty-five feet in height, with all new site improvements and landscaping. The proposed floor area ratio (FAR) of the completed project (Phase I and II) would be approximately 2.49.

This property transfer between PS and AH will help foster a pedestrian friendly environment within the Terra Bell neighborhood. The PS project will be located behind the AH project and adjacent to the freeway with the PS project creating an attractive aesthetic and noise buffer between the freeway and the future residents of the AH project. These benefits cannot be achieved through the current property configuration, only through this unique collaborative venture proposed by AH and PS.

PS Existing Facility

The proposed project includes redevelopment of an existing, 188,890 SF, four and one-third acre, Public Storage facility built in 1982. The existing self-storage facility includes 77,418 SF in eighteen single story drive-up buildings including a rental office. Current access to the property, including the rental office, is on Terra Bella Avenue. An emergency only access is located on Linda Vista Avenue. All the existing buildings and site improvements will remain occupied until building permits are issued. The site currently has two employees, including one onsite manager. The rental office is open Mon-Fri 9:30am to 6:00pm and Sat-Sun 9:30am to 5:00pm. Customer access hours are Mon-Sun 6:00am to 9:00pm.

The existing facility is well maintained and managed, and provides self-storage services, primarily to the residents and businesses of Mountain View. Public Storage will continue to own and operate this property for the long term and is interested in a significant reinvestment in this location that would modernize and improve the self-storage product offering.

Proposed Project

The 101 freeway runs along the entire north side of the proposed PS project, San Rafael drive is to the east, and the new Alta Housing project will be to the south of Building 2. Various industrial uses are adjacent to the west side of Building 1 and the south side of Building 2. Linda Vista Avenue runs along the west side of Building 1.

After PS transfers over 20,000 S.F. of land area to AH, the PS property will be reduced to 164,396 SF(3.77 AC). The proposed PS project consists of two self-storage buildings to be constructed in two Phases. Phase I will include Building 1, on the west portion of the property. It is a six-story, approximately 285,012 SF building including a new approximately 1,000 SF rental office. Access to the new building will be from Linda Vista Avenue. Approximately 52,610 SF of the existing single story

self-storage buildings will be demolished to make room for Phase 1 and to clear the land to be transferred to Alta Housing. The remaining self-storage buildings on the east side (Phase 2) of the property will remain and be occupied by the existing tenants. During construction of Phase 1 the existing units will be accessed from San Rafael Avenue and after Phase 1 is open the entire facility will be accessed from Linda Vista Avenue where the new rental office is located.

Phase II will include demolition of the remaining 24,808 SF of existing self-storage units and construction of Building 2 on the east side of the property. Building 2 will be four stories and approximately 123,952 SF. Phase II construction will begin one to three years after Phase I is complete. This will allow time to fully occupy Building 1 (Phase 1). The total proposed building area after both phases are complete will be 408,964 SF. However, if market conditions change, and the demand for storage declines, it is possible that PS may not build Phase II.

A new locked, trash/recycling enclosure will be located adjacent to Building 1 that will accommodate trash for both Building 1 and eventually Building 2. The trash and recycling bins are only available to Public Storage office staff. Customers are required to remove their own debris from the facility.

Since the existing PS rental office is located on the property that will be transferred to AH, a temporary office trailer will be erected on PS property near the San Rafael Avenue entrance while Building 1 is being constructed. The temporary office trailer will be removed as soon as Building 1 is approved for occupancy.

AH will provide an apartment within the affordable housing project for the PS on-site manager to replace the manager's unit that is being demolished. If AH funding sources will not allow a unit to be occupied by the PS on-site manager, the PS drawings currently include an 800 SF manager's apartment in Building 1. If the apartment in Building 1 is not needed, this area will be constructed as self-storage units.

PS Operations

Customers will access the new buildings and their storage spaces through secured lobbies in each building, using an individual key code. At completion of the project, all the storage units in the new buildings will be internally accessed and climate controlled, to better serve customers in Mountain View.

Customers will visit the rental office to inquire about rental space, pay rent, or purchase packing supplies such as boxes or tape. The proposed rental office hours are 9:00 a.m. to 8:00 p.m., and customer access hours will be from 6:00 a.m. to 9:00 p.m., seven days a week. Once Phase I and II are completed, one to four employees per shift will staff the facility. Based on market conditions, the office and customer hours may be revised after opening.

Parking

At completion of both Phases, PS will provide total of 75 parking spaces. PS is seeking a parking reduction of 134 spaces. This reduction is based on the operation and experience of other PS facilities in the area as well as previous PS parking studies. Parking is available adjacent to the rental office, and additional parking spaces and loading areas will be located adjacent to each of the customer lobbies.

Zoning

The site and all the adjacent properties are zoned MM – General Industrial. PS and AH are seeking a rezoning of the entire site to P (Planned Community), a General Plan designation change for the housing site to High Density Residential (36 to 80 dwelling units per acre), a Lot Line Adjustment, and a General

Plan text amendment to allow greater industrial intensity under the General Industrial designation.

Design and Sustainability

The new buildings have a contemporary architectural design and will include various exterior materials, including plaster, split face CMU, showcase windows, spandrel glass, metal panels and storefront glass. Vertical and horizontal changes in the building massing as well as color and material changes will visually break up the building facades.

Public Storage projects are energy efficient and will meet or exceed the City of Mountain View Green Building standards and the CalGreen code, as well as be LEED Certified. All PS climate-controlled projects are only heated if interior temperatures reach approximately 55 F and cooled only when interior temperatures reach approximately 85F. All the interior lights, except for emergency lights, are operated via motion detector, so are completely off most of the time. A minimum of 50% of the roof of the buildings will include solar panels.

Benefits

In addition to the contribution of approximately .5 acres to AH, we believe this redevelopment will provide several near-term and long-term benefits to the community. Public Storage requires very little in the way of public services, creates no school impacts, and would not affect the jobs/housing ratio of the city. Public Storage provides an ideal buffer between the freeway and the proposed affordable housing project as well as other surrounding uses. The design and use are appropriate for this property, are complimentary to the neighborhood, adjoining uses, and the Terra Bella community. The PS project also provides construction jobs and will significantly increase property taxes.

Public Storage has experienced significant growing demand for storage services in the community. With the residential and commercial projects currently being contemplated and processed at the City of Mountain View, we anticipate the demand will continue to increase. Public Storage believes they are best suited to meet this increased need with this proposed modern, safe, and secure storage facility.

ATTACHMENT 2 - LAND EXCHANGE

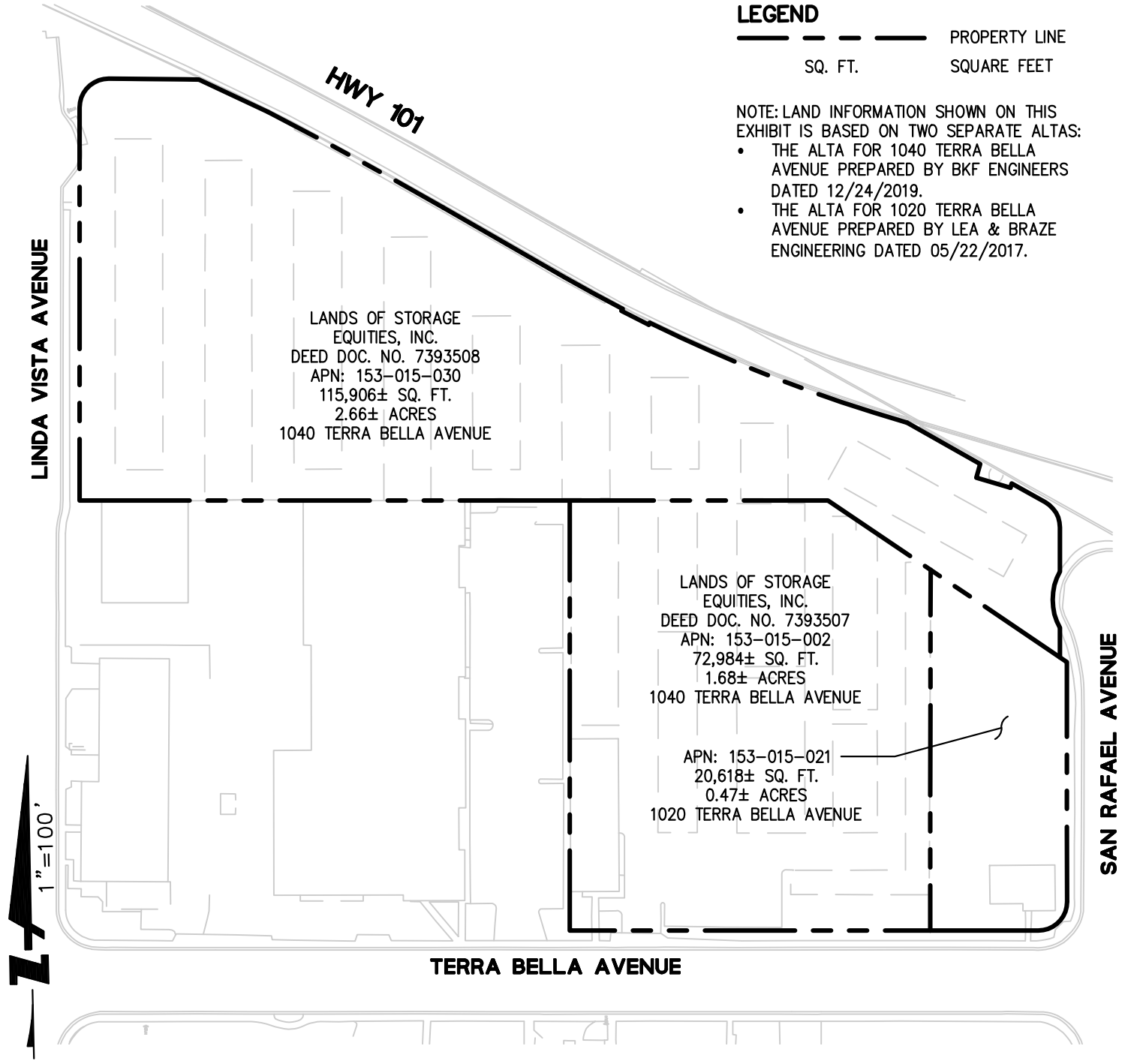

EXHIBIT "A"
BOUNDARY EXHIBIT

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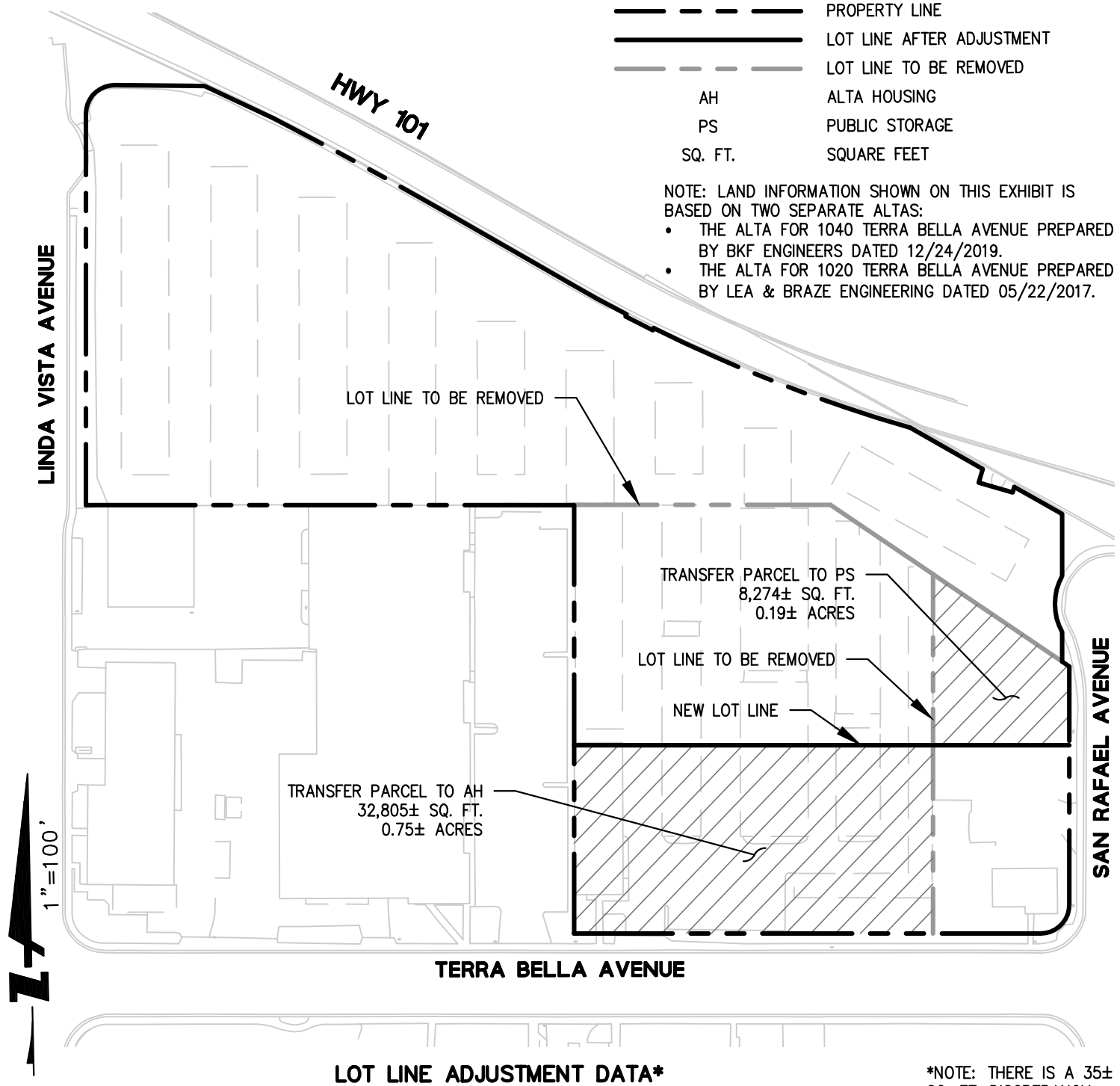
Subject LAND SWAP PLAN
1040 TERRA BELLA AVENUE
Job No. 20191341
By JH Date 04/16/2021 Chkd. TN
SHEET 1 OF 3



LOT LINE ADJUSTMENT DATA*

LOT REF.	EXISTING AREA	ADJUSTED AREA	DELTA
AH PARCEL	20,618± SQ. FT.	45,180± SQ. FT.	+24,562± SQ. FT.
PS PARCEL	188,890± SQ. FT.	164,396± SQ. FT.	−24,494± SQ. FT.

*NOTE: THERE IS A 35± SQ. FT. DISCREPANCY BETWEEN THE TWO DIFFERENT ALTA'S USED.

EXHIBIT "B"

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LOT LINE ADJUSTMENT EXHIBIT

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SHEET 2 OF 3

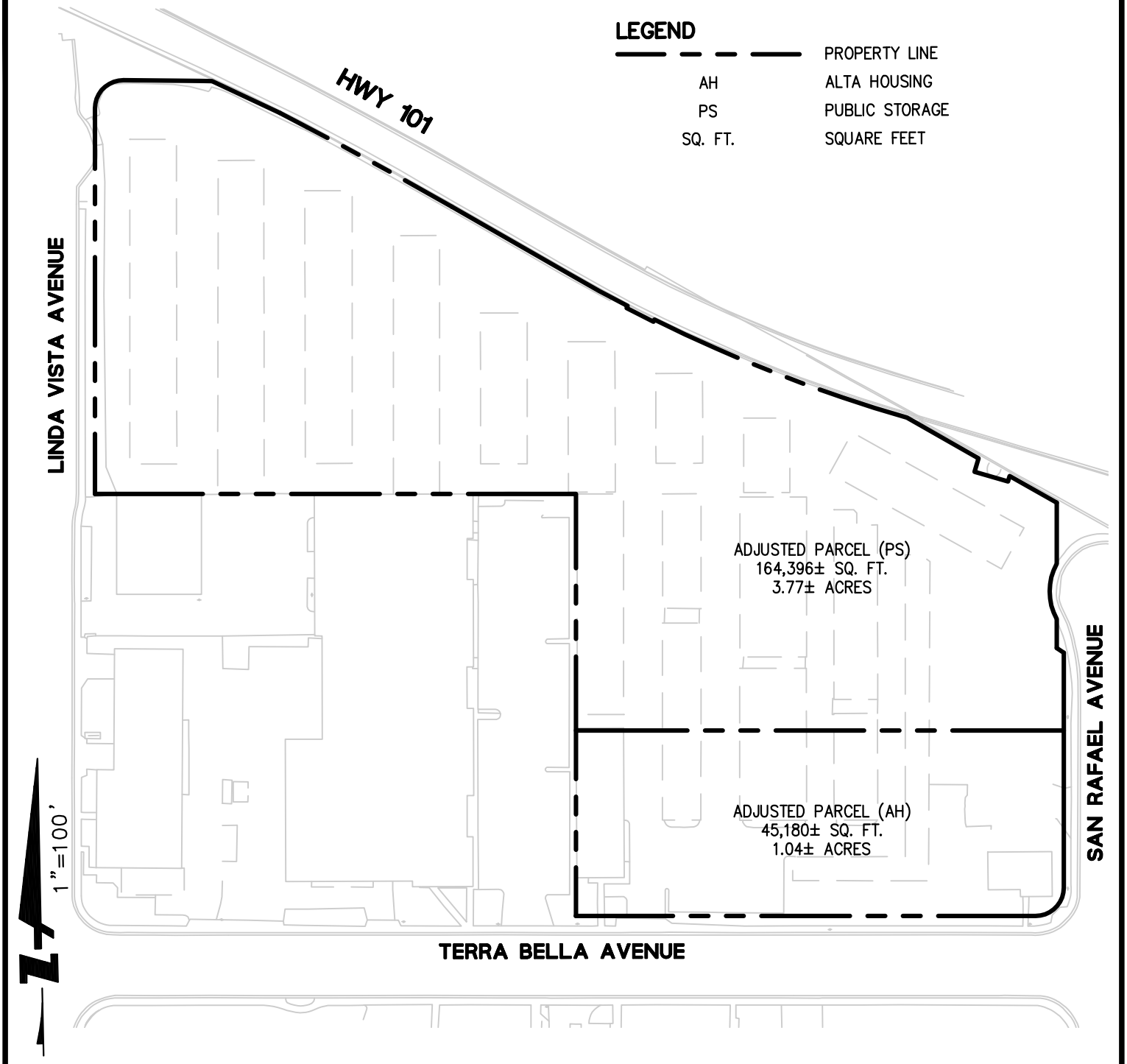

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EXHIBIT "C"

AFTER LAND DONATION

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Job No. 20191341
By JB Date 04/16/2021 hkd. PC
SHEET 3 OF 3

Attachment 3
Land Contribution and Community Benefit valuation

from
Public Storage to ALTA Housing
for
Redevelopment of 1040 Terra Bella
Valuation As of March 8, 2022

Public Storage (PS) is proposing to transfer .56 net AC (24,531 SF) of land to ALTA Housing (AH) as a Community Benefit for the project. Following is a revised estimate of the Community Benefit value of the land contribution.

In conclusion, it is estimated that the total value of the land contribution as a community benefit is valued at approximately $10.2 M.

COMMUNITY BENEITS

In the original Gatekeeper letter, March 2, 2020, the PS donation of land was valued at $9 million. We recently reviewed that value and determined that the current Community Benefit value is closer to a total of $10.2 million. This value is based on comparable land sales between 2017- 2022 in Mountain View and Palo Alto that ranged in size from .367 AC to 2.53 AC and value from $315/sq. ft to $490/sq. ft. which resulted in an estimated value of $415/s.f. for Medium to High Density Multifamily residential development.

PS is seeking an increase in the FAR from .56 to 2.49 FAR. To achieve this higher FAR, projects may propose community benefits that are proportional to the project's building square footage in excess of the Base FAR as allowed by the City Council.

One of the allowed community benefits is the provision of affordable housing. PS contribution of .56 AC of land to AH will allow them to add an additional 54 units to the project. In addition, following are other community benefits of this contribution for consideration:

- Achieves one of the City's goals to offer a variety of housing types at varying income levels
- Doubles the number of AH affordable housing units from 54 to approximately 108 units. An increase of 54 additional units.
- Creates a 100% affordable, family housing community with one, two- and three-bedroom units.
- Improves layout, quality, and design of the affordable housing project.
- PS is prepared to relinquish frontage on Terra Bella and place their project behind the AH project. This proposed layout buffers the AH project from the freeway and creates a more pedestrian friendly environment on Terra Bella Avenue.
- PS has one manager residential unit that would be incorporated into the AH project.
- Increase in number of bedrooms from 101 to approximately 220.
- Increase in the number of extremely low- and low-income individuals housed from less than 150 to over 320.

Attachment 4
Housing impact fee waiver eligibility

Rev 2.11.22

PS is seeking a Housing Fee Waiver pursuant to City Code Section 36.40.65 (d)(3) "Commercial and industrial development: Housing Impact Fee Program – Adjustment, reduction or waiver."

> *If the nonresidential development project is constructed for a specific use involving no employees or fewer than one (1) employee per two thousand (2,000) square feet of gross floor area, the project may be eligible for a waiver of the fees. To be eligible for a waiver, the building must be designed and built such that it cannot be converted to a use capable of housing a larger number of employees except by major reconstruction. The burden of proof shall be on the applicant. If a waiver is granted, a "notice of conditional waiver of housing impact fee" shall be recorded in the Santa Clara County Office of the Recorder. If a subsequent change in the use or structure of the building occurs which involves additional employees, the waiver granted herein shall be deemed revoked, subject to a hearing before the zoning administrator, who shall make a recommendation on the revocation to the city council. The decision of the city council shall be final.* ***Mountain View Municipal Code,*** *Section 36.40.65(d)(3)*

Currently the existing self-storage facility has been in operation since 1982 and includes 77,418 SF in eighteen single story drive-up buildings including a rental office. The site currently has two employees, including a manager living onsite.

The existing facility provides self-storage services, primarily to the residents and businesses of Mountain View. Public Storage will continue to own and operate this property for the long term and is planning to make a significant reinvestment in this location that would modernize and improve the self-storage product offering.

The proposed redevelopment of the PS site at 1040 Terra Bella for Phases I and II includes 408,964 SF of building area. The proposed project will have two to four employees including one manager that will either live in an apartment in the adjacent Alta Housing project or onsite in an apartment provided by Public Storage. The increase in employees at the site due to the proposed project will be zero to two. The number of employees is significantly below the waiver threshold of one employee per two thousand (2,000) square feet of floor area.

Further, the PS buildings are highly specialized and only designed as a storage facility. The building will not have any windows to the interior except at the first-floor rental office, customer lobbies, and manager's apartment. All windows on the upper floors will be spandrel glass or showcase windows only. The building will include utilities only for a few single occupancy restrooms, limited HVAC, motion detection lighting, and no natural gas. It will not have infrastructure or facilities that are capable of being converted to a facility of another use that could house a larger number of employees unless the project is completely reconstructed. In addition, as part of the proposed project, PS is donating land in order to construct affordable housing.

PS understands that if a waiver is granted a "notice of conditional waiver of housing impact fee" shall be recorded in the Santa Clara County Office of the Recorder.

Thank you for considering this request for a Housing Fee Waiver.

Attachment 5
Public Storage Development Agreement
Term Sheet and Sample Agreement
Revised 2.22.22

- **Example Agreement** - 600 Ellis Street Project (February 12, 2021) with SI 33, LLC (attached).

- **Parties**: City of Mountain View ("City") and Storage Equities, Inc, a California corporation ("PS") (see title report).

- **Property**: 4.3 acres with a street address of 1040 Terra Bella Avenue, Mountain View, CA (see title report).

- **Project**: PS proposes to redevelop the Property with a new 4 to 6 story self-service storage facility (the "PS Project). The PS Project is currently anticipated to be developed in two phases, the northwest portion of the property will be Phase I and the southeast portion will be Phase II. It is anticipated that Phase I will consist of the development of a structure consisting of approximately 285,012 gross square feet of space, and the Phase II will consist of the development of a structure consisting of an additional approximately 123,952 gross square feet of space.

- **Affordable Housing Land Contribution:** As part of the PS Project, PS intends to process a lot line adjustment (the "PS LLA") that will enable PS to convey to Alta Housing, a California nonprofit corporation ("Alta") an approximately 24,531 square foot portion of the PS Property (the "PS Contribution Parcel"). The conveyance of the PS Contribution Parcel to Alta will allow AH to increase the number of affordable housing units Alta can develop on its property (located at 1020 Terra Bella) from 56 to approximately 108 units ("Alta Affordable Housing Project"), while also buffering such affordable housing units from US Highway 101 with the reconfigured parcel of land owned by PS and the new PS Project.

- **Public Benefit Fee.** $1.54/SF for gross building area, paid within 20 days of entitlement approval including appeal period.

- **Entitlements**: It is anticipated that the applications for the PS Project and the Alta Affordable Housing Project will be submitted separately but reviewed and considered concurrently with a joint analysis under the California Environmental Quality Act. It is anticipated that the following entitlements will be required for the PS Project, in addition to CEQA: (1) General Plan amendment, (2) Planned Development/rezoning, (3) Planned Community Permit, (4) Development Review Permit, (5) Tree Removal Permit, and (6) PS LLA.

- **Term**: In order to provide sufficient certainty to commit to the PS LLA and allow for the completion of both phases, PS requests a 7-year term.

- **Vesting**. In order to provide sufficient certainty to commit to the PS LLA and allow for the completion of both phases, PS requests vesting of the Entitlements for the full term, under substantially similar terms as the 600 Ellis DA.

Public Storage Mountain View cont'd

- **Fees**. To allow for budgeting certainty to support the PS LLA, PS requests that no new fees (or other exactions) apply after the Effective Date, but PS is willing to pay the rate of existing fees at the rate in effect as of the date of the building permit.

- **Other Provisions**. With the exception of the necessary changes to the party, property and project information, the terms above - and the deletion of the TDR and East Whisman fee provisions - PS accepts and requests the general format and terms in the 600 Ellis Development Agreement.

- **Legal Counsel**. PS understands it is the City's standard procedure to retain outside counsel to draft and finalize the Development Agreement. PS's counsel for negotiation would be Tamsen Plume with Holland & Knight who assisted with the review of the 600 Ellis Development Agreement (tamsen.plume@hklaw.com)

Attachment: 600 Ellis Development Agreement

First American Title Insurance Company

Escrow No.: NCS-921205KD

****This document was electronically submitted to Santa Clara County for recording****

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Regina Alcomendras
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06/22/2021 10:39 AM

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DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF MOUNTAIN VIEW

AND

SI 33, LLC

FOR THE 600 ELLIS STREET AND
636 ELLIS STREET PROJECT

February 12, 2021

MN/6/CDD
813-10-28-20AG

DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MOUNTAIN VIEW AND SI 33, LLC

THIS DEVELOPMENT AGREEMENT ("Development Agreement") is made and entered into this 12th day of February 2021, 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 SI 33, LLC, a California limited liability company ("Owner"), pursuant to Government Code Sections 65864 *et seq.*

RECITALS

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

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

C. Owner has a legal interest in certain real property located in City consisting of approximately 4.45 acres and commonly known as 600 Ellis Street and 636 Ellis Street (collectively, the "Property"), which Property is described in the attached Exhibit A, and shown on the map attached as Exhibit B.

D. Owner desires to redevelop the Property by demolishing two (2) existing one (1) and two (2) story buildings (sixty-three thousand two hundred sixteen (63,216) square feet total) located at 600 Ellis Street and building one (1) new office building and associated parking structure in the vacated areas of the Property (the "Project"). The new office building ("Building") will be six (6) stories and will contain approximately two hundred fifty-nine thousand ninety-five (259,095) square feet of new office space. The parking structure will be seven (7) stories (eight (8) total parking levels) providing approximately six hundred ninety-eight (698) parking spaces in addition to forty-five (45) surface parking spaces (seven hundred forty-three (743) total). The existing two (2) story, fourteen thousand six hundred twelve (14,612) square foot building at 636 Ellis Street will remain. The completed Project (including the existing building at 636 Ellis Street) will have approximately two hundred seventy-four thousand two hundred seven (274,207)

square feet of floor area. After taking into account subtraction of the sixty-three thousand two hundred sixteen (63,216) square feet of floor area of the demolished buildings, the Project will result in a net increase in floor area of approximately one hundred ninety-five thousand eight hundred seventy-nine (195,879) square feet.

E. The Property is located within the East Whisman Change Area under the City's 2030 General Plan (the "General Plan"), which was adopted on July 10, 2012 by Resolution No. 17710, and the area subject to the East Whisman Precise Plan (the "Precise Plan") adopted November 5, 2019 by Resolution No. 18395_. Under the General Plan, the Property is designated "High-Intensity Office," and, under the Precise Plan, the Property is designated a "High Intensity" subarea within the "Employment Character Area (North)," which allows development at a floor area ratio ("FAR") of up to 1.0 for projects with measures for highly sustainable development consistent with City's Zoning Ordinance or Precise Plan standards. As of the date of this Development Agreement, City anticipates that, in connection with the Precise Plan, it will consider whether to authorize a new development impact fee that would apply to new development within the Precise Plan Area as a means of financing infrastructure improvements that may be necessary to support future growth within the area as called for in the General Plan.

F. Within the time set forth herein, Owner will also purchase eighty thousand (80,000) square feet of Transfer of Development Rights ("TDRs") from the Los Altos Unified School District ("LASD") to help support the LASD and City's development of a new school site and shared park facilities in the San Antonio planning area. This will provide for Ten Million Four Hundred Thousand Dollars ($10,400,000) in new funds for the LASD project ("TDR Payment"). With the TDRs, the Project will be allowed to exceed the 1.0 FAR by an additional eighty thousand (80,000) square feet.

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

1. Initial Study of Environmental Significance. 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 and in accordance with the recommendation of the City's Environmental Planning Commission (the "Planning Commission"), the City Council approved an Initial Study of Environmental Significance for the 600 Ellis Street Project ("Consistency Checklist") confirming that the environmental effects of the Project were adequately evaluated and covered by the East Whisman Area Precise Plan Program Environmental Impact Report (SCH No. 20177082051) (the "EIR"), and all significant impacts of the project with implementation of the East Whisman Precis Plan standards and guidelines, State regulations, and mitigation measures identified in the East Whisman Precise Plan Program EIR, the 2030 General Plan, and Greenhouse Gas

Reduction Program EIR, and City standard conditions of approval will not result in any new environmental impacts beyond those evaluated in the EIR.

2. Planned Community Permit. Following review and recommendation by the Planning Commission, and after a duly noticed public hearing and certification of the Consistency Checklist, the City Council, on November 17, 2020, approved a Planned Community Permit pursuant to Section 36.50.30 of the City Code by Resolution No. 18523 (the "Planned Community Permit").

3. Heritage Tree Removal Permit. Following review and recommendation by the Planning Commission, and after a duly noticed public hearing and certification of the Consistency Checklist, the City Council on November 17, 2020, approved a Heritage Tree Removal Permit for the removal of twenty-three (23) Heritage trees from the Property by Resolution No. 18523 (the "Heritage Tree Removal Permit").

4. Development Review Permit. Following review and recommendation by the Planning Commission, and after a duly noticed public hearing and certification of the Consistency Checklist, the City Council, on November 17, 2020, approved a Development Review Permit for the Project by Resolution No. 18523 (the "Development Review Permit").

The approvals described in this Recital G are collectively referred to as the "Existing Approvals." The Existing Approvals, together with any Subsequent Approvals, are referred to herein collectively as the "Approvals."

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

I. A primary purpose of this Development Agreement is to assure that the Project can proceed without disruption caused by a change in City's planning policies and requirements following the Approvals and to ensure that the community benefits Owner committing to provide in connection with development of the Project are timely delivered. Owner also desires the flexibility to develop the Project in response to the market, which is uncertain due to the COVID-19 pandemic, and to ensure that the Approvals remain valid over the projected development period.

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

K. City will receive a public benefit fee in the amount of Four Hundred Thousand Dollars ($400,000) to be paid to City by Owner within twenty (20) days of the receipt by Owner of a copy of this Development Agreement duly authorized and executed on behalf of City. Additional public benefits set forth in the Approvals and this Development Agreement are described in Section 3.1. Owner recognizes it is being afforded greater latitude concerning long-term assurances for development of the Project in exchange for agreeing to contribute greater public benefits than could otherwise be required as part of the requirements imposed for the Approvals and does so freely and with full knowledge and consent. City will further benefit from an increase in the likelihood that the public benefits which are reflected in the conditions to the Approvals will be realized by City because this Development Agreement will increase the likelihood that the Project will be completed pursuant to the Approvals.

L. For the reasons stated herein, among others, City and Owner have determined that the Project is a development for which a development agreement is appropriate. This Development Agreement will, in turn, eliminate uncertainty in planning for and securing orderly development of the Project. City has also determined that the Project presents public benefits and opportunities and will 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 development; enhance the use of transit; and otherwise achieve the goals and purposes for which the Development Agreement Legislation was adopted.

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

N. City has given notice of its intention to adopt this Development Agreement, conducted public hearings thereon pursuant to Government Code Section 65867, and the City Council hereby finds that: (1) the provisions of this Development Agreement and its purposes are consistent with the General Plan, the Precise Plan, Chapter 36 (Zoning) of the City Code (the "Zoning Ordinance"), and CEQA; (2) the Project and this Development Agreement are compatible with the uses authorized in, and the regulations prescribed for, the General Plan and Precise Plan land use districts in which the Property is located; (3) this Development Agreement complies in all respects with City's Ordinance No. 9.00, as adopted effective May 1, 2000 (the "Development Agreement Ordinance"); (4) this Development Agreement will not be detrimental to the health, safety, and general welfare of the community; (5) this Development Agreement will not adversely affect the orderly development of property or the preservation of property values; (6) this Development Agreement would facilitate the development of the Property in the manner proposed and is needed by the Owner due to the timing constraints on the redevelopment of the Property; (7) the proposed development should be encouraged in order to meet important economic, social, environmental, or planning goals of City;

(8) Owner has made commitments to a high standard of quality; (9) this Development Agreement is in conformity with public convenience, general welfare, and good land use practice; and (10) this Development Agreement is advantageous to, and benefits, City.

O. Following a duly noticed public hearing, this Development Agreement was approved by the City Council of City by Ordinance No. 14-20, which was introduced on November 17, 2020 and finally adopted on December 8, 2020 and became effective thirty (30) days thereafter, and was duly executed by the parties as of January 8, 2021.

AGREEMENT

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

ARTICLE I – PROPERTY AND TERM

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

1.2 **Term of Development Agreement and Effective Date.** The term of this Development Agreement ("Term") shall commence upon the effective date of the ordinance approving this Development Agreement ("Effective Date"), and, unless earlier terminated in accordance with the terms hereof, shall continue in full force and effect until the "Expiration Date" (as defined in Section 1.3 below) (subject to extension as provided in Section 6.3(b)).

1.3 **Expiration Date.** Except as otherwise provided in Section 6.3(b), the Term of this Development Agreement shall expire on the seventh (7th) anniversary of the Effective Date (the "Expiration Date").

ARTICLE II – DEVELOPMENT OF THE PROPERTY

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

2.2 **Right to Develop.** Owner shall have the vested right to develop the Project in accordance with and subject to: (a) the terms and conditions of this Development Agreement and the Approvals and any amendments to any of them as shall, from time to time, be approved pursuant to this Development Agreement; and (b) the Existing Standards (as defined in Section 2.5(b)). Nothing contained herein shall restrict City's discretion to approve, conditionally approve, or deny amendments or changes to the

Approvals proposed by Owner. Except as is expressly provided otherwise in this Development Agreement, no future modifications of the following shall apply to the Project: (a) the General Plan or Precise Plan; (b) the City Code; (c) applicable laws and standards adopted by the City which purport to: (i) limit the use, subdivision, development density, design, parking ratio or plan, schedule of development of the Property or the Project; or (ii) impose new dedications, improvements, other exactions, design features, or moratoria upon development, occupancy, or use of the Property or the Project; or (d) any other Existing Standards.

2.3 **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: amendments of the Approvals, grading permits, building permits, sewer and water connection permits, certificates of occupancy, and any amendments to, or repealing of, any of the foregoing. The conditions, terms, restrictions, and requirements for such Subsequent Approvals shall be in accordance with the Existing Standards (except as otherwise provided in Sections 2.5(c) and 2.9) and shall not prevent development of the Property for the uses provided under the Approvals, the Existing Standards, and this Development Agreement ("Permitted Uses"), or reduce the density and intensity of development, or limit the rate or timing of development set forth in this Development Agreement, as long as Owner is not in default under this Development Agreement. Any subsequent discretionary action or discretionary approval initiated by Owner that is not otherwise permitted by or contemplated in the Approvals or which changes the uses, intensity, density, or building height or decreases the lot area, setbacks, parking, or other entitlements permitted on the Property 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.

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

2.5 **Development Timing and Restrictions.**

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

and Owner that, notwithstanding any future amendment to the General Plan, the Precise Plan, the Zoning Ordinance or any other ordinance, policy, plan, rule, or procedure of City or any other of the Existing Standards or the adoption of any ordinance, policy, plan, rule, or procedure (whether amended or adopted by means of an ordinance, City Charter amendment, initiative, resolution, policy, order, or moratorium, initiated or instituted for any reason whatsoever and adopted by the City Council, Planning Commission, Zoning Administrator, or any other board, commission, or department of the City or any officer or employee thereof, or by the electorate by referendum or initiative), Owner, subject to the terms of this Development Agreement, shall have the right to develop the Project in such order and at such rate and times as Owner deems appropriate within the exercise of its sole and subjective business judgment. Such right is consistent with, and necessary to, the purpose and understanding of the parties to this Development Agreement, and that, without such a right, Owner's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Legislation and this Development Agreement.

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

(c) Notwithstanding anything to the contrary in this Development Agreement, the following "New City Standards" shall apply to development of the Property:

(i) New City Standards that relate to 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 Standards are uniformly applied on a Citywide or East Whisman planning areawide 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 Development Agreement;

(ii) Other New City Standards 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 6.5;

(iii) Other New City Standards that do not conflict with the Existing Standards, this Development Agreement or the Approvals, provided such New City Standards are uniformly applied on a Citywide or East Whisman planning areawide basis to all substantially similar types of development projects and properties; and

(iv) Other New City Standards 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 Standards are accepted in writing by Owner in its sole discretion.

To the extent one (1) or more New City Standards apply to the Property and/or Project in accordance with the terms set forth above, the Existing Standards shall be deemed modified to include such New City Standards.

(d) If any governmental entity or agency other than City passes any State or Federal law or regulation after the Effective Date which prevents or precludes compliance with one (1) or more provisions of this Development Agreement or requires changes in plans, maps, or permits approved by the City notwithstanding the existence of this Development Agreement, then the provisions of this Development Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new law or regulation. Immediately after enactment of any such new law or regulation, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Development Agreement. In addition, Owner shall have the right to challenge the new law or regulation preventing compliance with the terms of this Development Agreement, and, to the extent such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect; provided, however, that Owner shall not develop the Project in a manner clearly inconsistent with a new law or regulation applicable to the Project and adopted by any governmental entity or agency other than City or any entity affiliated with City, except to the extent that enforcement of such law or regulation is stayed or such law or regulation is repealed or declared unenforceable or such law or regulation is not applicable to projects as to which a development agreement has been executed.

2.6 **Development Fees, Assessments, Exactions, and Dedications.** Owner shall pay all applicable City fees, including processing fees, impact fees, and water and sewer

connection and capacity charges and fees; assessments; dedication formulae; and taxes payable in connection with the development, build-out, occupancy, and use of the Project that apply uniformly to all similar developments in the City (or in the case of the East Whisman Impact Fees, the Precise Plan area) at the rates in effect at the time Owner applies for a building permit approval in connection with the Project (regardless of whether such fees, assessments, dedication formulae or taxes became effective before, on or after the Effective Date); provided, however, that Owner shall not be required to pay any East Whisman Impact Fees (defined in Section 3.1 below) adopted for new development within the Precise Plan Area at a rate in excess of the amount set forth in Section 3.1(c)(iii). Owner shall be subject to all increases in fees established by City from time to time during the Term and that generally apply to all developments of the same type in City. No new fee, assessment, exaction, or required dedication policy not in effect on the date on which Owner has applied for approval of a building permit for development subject to this Development Agreement shall be imposed on the Project unless it is imposed uniformly on all substantially similar types of development either Citywide or East Whisman planning areawide and is not limited in fact to the Project. If any building permit lapses after issuance and the permit can be renewed or reissued under the City Code, the fees in effect at the time of renewal or reissuance shall apply.

2.7 **Mitigation Measures and Conditions.** If Owner constructs the Project, Owner shall satisfy and comply with the Mitigation Measures as set forth in the EIR and the Mitigation Monitoring and Reporting Program as well as all Conditions of Approval for the Project, which are incorporated in this Development Agreement by reference. Owner's obligations under this Section 2.7 shall survive the expiration or earlier termination of this Development Agreement.

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

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

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

2.9 **Floor Area Ratio.** Consistent with the Approvals for the Term of this Development Agreement, Owner has the vested right to develop the Project at a FAR of up to 1.0 plus an additional 80,000 square feet of development authorized by the TDRs to be acquired by Owner from LASD as provided in Section 3.1(b) below.

ARTICLE III – PUBLIC BENEFITS

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

(a) Public Benefit Fee. Owner shall pay a public benefit fee in the amount of Four Hundred Thousand Dollars ($400,000) (the "Public Benefit Fee") to City within twenty (20) days of the receipt by Owner of a copy of this Development Agreement authorized and executed on behalf of City. If Owner fails to pay such Public Benefit Fee, this Development Agreement will automatically terminate, which shall be the sole remedy of City with respect to such failure. The Public Benefit Fee shall be retained by City regardless of whether Owner opts to proceed with development of the Project.

(b) Purchase of TDRs from LASD. Owner acknowledges and agrees that Owner's purchase of TDRs from LASD is anticipated to generate revenue, and LASD will need to pay a portion of the costs of LASD and City's planned development of a new school site and shared park facilities in the San Antonio planning area. Accordingly, Owner shall complete its purchase of eighty thousand (80,000) square feet of TDRs from LASD by paying the TDR Payment to LASD on or before the second (2nd) anniversary of the Effective Date. If Owner fails to pay such TDR Payment to LASD, this Development Agreement will automatically terminate, which shall be the sole remedy of City with respect to such failure. Owner acknowledges that City has not made any representation or warranty as to the availability of such TDRs from LASD, and Owner assumes all risk in connection therewith.

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

(i) Subject to adjustment as hereinafter set forth, for the net new square footage created on the Property prior to the adoption of an ordinance establishing a rate for the East Whisman Impact Fees, Owner agrees to pay to City a negotiated fee in an amount equal to the product of the PSF East Whisman Fee Amount (defined below) multiplied by the net new square footage of the Building that is the subject of the building permit. Such fee shall be payable at the time a building permit is issued for any building on the Property. The "PSF East Whisman Fee Amount" shall initially be Sixteen Dollars and Sixty-One Cents ($16.61); provided, however, such PSF East Whisman Fee Amount shall be subject to annual escalation during the Term based on increases in the ENR Index. "ENR Index" means the Construction Cost Index for San Francisco, as published from time to time by the Engineering News Record. As used in this Development Agreement, "net new square footage" means the additional square footage of floor area in the new building or buildings after subtracting the floor area of the buildings at 600 Ellis Street that have previously been demolished (sixty-three thousand two hundred sixteen (63,216) square feet of floor area).

For purposes of illustration only, if Owner obtains a building permit for a new building in the first year of the Term and the new building has two hundred fifty-nine thousand ninety-five (259,095) square feet of floor area, the fee pursuant to this subsection would be determined after crediting the full amount of the floor area of the 600 Ellis Street buildings that have been demolished (a total of sixty-three thousand two hundred sixteen (63,216) square feet) against the new floor area for a total of one hundred ninety-five thousand eight hundred seventy-nine (195,879) net new square feet. At the rate of Sixteen Dollars and Sixty-One Cents ($16.61) per net new square foot, the fee would be Three Million Two Hundred Fifty-Three Thousand Five Hundred Fifty Dollars and Nineteen Cents ($3,253,550.19), (Sixteen Dollars and Sixty-One Cents ($16.61) per square foot times one hundred ninety-five thousand eight hundred seventy-nine (195,879) net new square feet). For purposes of illustration only, the parties agree that if the maximum net new square footage for the entire Project is one hundred ninety-five thousand eight hundred seventy-nine (195,879) square feet and Owner obtains a building permit for all such development in the first year of the Term, and if City has not adopted an ordinance establishing a rate for the East Whisman Impact Fees, the maximum amount to be paid pursuant to this Section at the time the building permit is issued for the Project would be the amount noted above, which amount will be subject to potential reduction and refund pursuant to subsections (ii) and (iii) below.

(ii) Upon adoption of an ordinance establishing a rate for the East Whisman Impact Fees, the parties agree that if the aggregate rate for the East Whisman Impact Fees is less than Sixteen Dollars and Sixty-One Cents ($16.61) per net new square foot, then City shall refund to Owner the excess amounts, if any, previously paid by Owner within thirty (30) days after the effective date of such ordinance. The amount of the refund shall be determined by applying the following formula: the credit shall equal the total net new square footage of the new building(s) multiplied by the difference of Sixteen Dollars and Sixty-One Cents ($16.61) minus the rate of the East Whisman Impact Fees as established by the ordinance. Any refund shall be made within thirty (30) days of the effective date of the ordinance.

(iii) For any new building permits issued after the effective date of a City ordinance establishing a rate for the East Whisman Impact Fees, Owner will be required to pay the East Whisman Impact Fees at the rates set forth in the ordinance (including any escalations); provided, however, Owner shall not be required to pay East Whisman Impact Fees adopted for new development within the Precise Plan Area at a per net new square foot rate that exceeds the PSF East Whisman Fee Amount in effect from time to time.

(iv) In addition to any other remedies provided for by this Development Agreement, the failure of Owner to timely pay any applicable fees pursuant to this Section shall be grounds for City to refuse issuance of a building permit, and, if a building permit has nevertheless been issued, City may refuse issuance of a Certificate of Occupancy for such building.

ARTICLE IV – OBLIGATIONS OF THE PARTIES

4.1 Owner.

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

4.2 City.

(a) City's Good Faith in Proceedings. As further provided in Section 2.3, in consideration of Owner entering into this Development Agreement, City agrees that it will accept, process, and review in good faith and in a timely manner all applications related to the Project for environmental and design review, demolition, grading, and

building permits, or other permits or entitlements for use of the Property, in accordance with the terms and spirit of this Development Agreement.

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

ARTICLE V – DEFAULT, REMEDIES, TERMINATION

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

5.2 **Notice of Breach.**

(a) Prior to the initiation of any action for relief specified in Section 5.1 above because of an alleged breach of this Development Agreement, the party claiming breach shall 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.

(b) 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 such 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 failure 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 failure is not cured, then a default shall exist under this Development Agreement and the nondefaulting party may exercise any of the remedies available under this Development Agreement.

(c) If, in the determination of the alleged breaching party, such event does not constitute a breach of this Development Agreement, the party to which the Notice of Breach is directed, within thirty (30) days of receipt of the Notice of Breach, shall deliver to the party giving the Notice of Breach a notice (a "Compliance Notice") which sets forth with reasonable particularity the reasons that a breach has not occurred.

5.3 **Applicable Law.** This Development 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 VI – ANNUAL REVIEW, PERMITTED DELAYS, AND AMENDMENTS

6.1 **Annual Review.** The annual review required by California Government Code Section 65865.1 shall be conducted pursuant to City Code Section 36.54.30 by the Community Development Director every twelve (12) months from the Effective Date for compliance with the provisions hereof. The Community Development Director shall notify Owner in writing of any evidence which the Community Development Director deems reasonably required from Owner in order to demonstrate good-faith compliance with the terms of this Development Agreement. Such annual review provision supplements, and does not replace, the provisions of Section 5.2 above whereby either City or Owner may, at any time, assert matters which either party believes have not been undertaken in accordance with this Development Agreement by delivering a written Notice of Breach and following the procedures set forth in said Section 5.2. Owner shall pay City's actual costs for its performance of the Annual Review, including staff time if and to the extent that more than two (2) hours of staff time is required to perform the annual review.

6.2 **Changes in State or Federal Law.** In the event changes in State or Federal laws or regulations substantially interfere with Owner's ability to carry out the Project, as the Project has been approved, or with the ability of either party to perform its obligations under this Development Agreement, the parties agree to negotiate in good faith to consider mutually acceptable modifications to such obligations to allow the Project to proceed as planned to the extent practicable.

6.3 **Permitted Delays.**

(a) 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 delay by strikes, lockouts, and other labor difficulties; Acts of God; 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 of the Project; failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body; changes in local, State, or Federal laws or regulations; any development moratorium or any action of other public agencies that regulate land use, development, or the provision of services that prevents, prohibits, or delays construction of the Project; enemy action; civil disturbances; wars; terrorist acts; fire; unavoidable casualties; or mediation, arbitration, litigation, or other administrative or judicial proceeding involving the Existing Approvals or this Agreement (each a "Force Majeure Delay"), provided that, except as otherwise provided in Section 6.3(b) below, the Term shall not be extended by reason of any Force Majeure Delay. An extension of time for any such cause shall be for the period of the Force Majeure Delay and shall commence to run from the time of the commencement of the cause, if notice (as defined in Section 10.3) by the party claiming such extension is sent to the other party within sixty (60) days of the commencement of the cause. 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 Owner. Owner's inability or failure to obtain financing shall not be deemed to be a cause outside the reasonable control of the Owner and shall not be the basis for a Force Majeure Delay.

(b) Extension of Term Due to Moratoria. In the event of any publicly declared moratorium or other interruption in the issuance of permits, approvals, agreements to provide utilities or services or other rights or entitlements by any State, local, or Federal governmental agency, or public utility which could postpone the construction of improvements at the Project, the Term of this Development Agreement shall be extended without further act of the parties by a period equal to the duration of any such moratorium or interruption; provided, however, the total Term extension under this Section 6.3(b) shall not exceed a total of two (2) years. Nothing in this Section is intended, however, to confer on City or any related agency any right to impose any such moratorium or interruption.

6.4 **Certain Waivers.** City shall have the right to waive or reduce the burden of provisions of the Approvals as they apply to any portion of the Property, with the consent of the Owner of such portion, so long as: (a) the waiver, reduction, or revision does not conflict with the land uses or 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 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 Owner of the portion of the Project as to which such waiver or reduction is granted.

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

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

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

6.8 **City Costs for Review.** During the Term of this Development Agreement, Owner shall promptly reimburse City for costs incurred by City to have its staff, consultant, or outside counsel review, approve, or issue assignments, estoppel certificates, transfers, amendments to this Development Agreement, and the like. Owner's obligations under this Section 6.8 shall survive expiration or earlier termination of this Development Agreement.

6.9 **Minor Amendments.**

(a) The parties acknowledge that the provisions of this Development Agreement require a close degree of cooperation between City and Owner, and, during the course of implementing this Development Agreement and developing the Project, refinements and clarifications of this Development Agreement may become appropriate and desired with respect to the details of performance of City and Owner. If, and when, from time to time, during the Term of this Development Agreement, City and Owner

agree that such a refinement is necessary or appropriate, City and Owner shall effectuate such refinement through a minor amendment or operating memorandum (the "Operating Memorandum") approved in writing by City and Owner, 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 Owner. No Operating Memorandum shall constitute an amendment to this Development Agreement requiring public notice or hearing.

(b) Notwithstanding the provisions of Section 6.7, and by way of illustration but not limitation of the above criteria for an Operating Memorandum, any refinement of this Development Agreement which does not affect: (a) the Term of the Development Agreement as provided in Section 1.2; (b) the right to develop, and Permitted Uses of, the Property as provided in this Development Agreement; (c) the general location of on-site and off-site improvements; (d) the density or intensity of use of the Project; (e) the maximum height or size of proposed buildings; or (f) monetary contributions by Owner as provided in this Development Agreement, shall be deemed suitable for an Operating Memorandum and shall not, except to the extent otherwise required by law, require notice or public hearing before either the Zoning Administrator or the City Council before the parties may execute the Operating Memorandum; provided, that such amendment shall first be approved by Owner and the Community Development Director (or if the City does not then have a Community Development Director, then by the holder of the position which includes the majority of the planning responsibilities held, as of the date of this Development Agreement, by the Community Development Director); and provided further, that the Community Development Director (or substitute) in consultation with the City Attorney shall make the determination on behalf of City whether a requested refinement may be effectuated pursuant to this Section 6.9 or whether the requested refinement is of such a character to constitute an amendment hereof pursuant to Section 6.7. The Community Development Director (or substitute) 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 6.9, and not "major modifications" subject to the provisions of Section 6.7.

6.10 **Amendment of Approvals.** Approval of any major modifications to the Project or Approvals requires City Council approval and the approval of Owner. Any of the following amendments to Approvals shall be deemed a "major modification" and shall require an amendment of this Development Agreement: (a) the term of the Development Agreement as provided in Section 1.2; (b) the right to develop, and Permitted Uses of, the Property as provided in this Development Agreement; (c) the general location of on-site and off-site improvements; (d) the density or intensity of use of the Project; (e) the maximum height or size of proposed buildings; or (f) monetary contributions by Owner as provided in this Development Agreement. Such amendment

shall be limited to those provisions of this Development Agreement, which are implicated by the amendment of the Approvals. Any other amendment of the Approvals shall not require amendment of this Development Agreement unless the amendment of the Approvals relates specifically to some provision of this Development Agreement.

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

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

ARTICLE VII – COOPERATION AND IMPLEMENTATION

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

7.2 **City Processing.**

(a) By City. The City shall cooperate with Owner in a reasonable and expeditious manner, in compliance with the deadlines mandated by applicable statutes or ordinances, to complete, at Owner's expense, all steps necessary for implementation of this Development Agreement and development of the Project in accordance herewith,

including, without limitation, in performing the following functions to process the Project:

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

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

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

7.3 **Other Governmental Permits.** Owner shall apply prior to the expiration of the Term of this Development Agreement for approvals which may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. City shall cooperate reasonably with Owner in its endeavors to obtain such permits and approvals at no cost to City. If, pursuant to the Existing Standards, such cooperation by City requires the approval of the City Council, such approval cannot be predetermined because decisions are made by a majority vote of the City Council.

ARTICLE VIII – TRANSFERS AND ASSIGNMENTS

8.1 **Transfers and Assignments.** Owner may assign this Development Agreement with the express written consent of City, which consent shall not be unreasonably withheld, conditioned, or delayed. Owner may assign this Development Agreement in whole or in part as to the Property, in connection with any sale, transfer, or conveyance thereof, and upon the express written assignment by Owner and assumption by the assignee by an assignment and assumption agreement in a form reasonably acceptable to City, and the conveyance of Owner's interest in the Property related thereto. Upon execution of an assignment and assumption agreement, Owner shall be released from any further liability or obligation hereunder related to the portion of the Property so conveyed and the assignee shall be deemed to be the "Owner," with all rights and obligations related thereto, with respect to such conveyed property.

8.2 **Covenants Run with the Land.** All of the provisions, agreements, rights, powers, standards, terms, covenants, and obligations contained in this Development Agreement shall be binding upon the parties and their respective heirs, successors (by

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

ARTICLE IX—MORTGAGE PROTECTION; CERTAIN RIGHTS OF CURE

9.1 **Mortgage Protection.** This Development Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording this Development Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Development Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

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

9.3 **Notice of Default to Mortgagee.** If City receives a notice from a Mortgagee requesting a copy of any notice of default given Owner hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee, concurrently with service thereon to Owner, any Notice of Breach given to Owner with respect to any claim by City that Owner 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 Owner. Each Mortgagee shall have the right during the same period available to Owner to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City's Notice of Breach.

ARTICLE X – GENERAL PROVISIONS

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

10.2 **Intentionally Omitted.**

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

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

With a copy to:
Office of the City Attorney
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
Owner:	SI 33, LLC Attn: Tim Steele c/o The Sobrato Organization 599 Castro Street, Suite 400 Mountain View, CA 94041
With a copy to:	Holland & Knight Attn: Tamsen Plume 50 California Street, Suite 2800 San Francisco, CA 94111

Notices delivered by deposit in the United States mail as provided above shall be deemed to have been served forty-eight (48) hours after the date of deposit or if sent via overnight courier on the next business day.

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

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

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

10.7 **Entire Agreement.** This Development Agreement, including the Recitals and the Attachments to this Development Agreement which are each incorporated herein by reference, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof. The Attachments are as follows:

Exhibit A	Legal Description
Exhibit B	Property Diagram

10.8 **Estoppel Certificate.** Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party: (a) this Development Agreement is in full force and effect and a binding obligation of the parties; (b) this Development Agreement has not been amended or modified orally or in writing, and, if so amended, identifying the amendments; (c) the requesting party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and amount of any such defaults; and (d) any other matter reasonably requested by the requesting party. The party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it is not obligated to do so within twenty (20) business days following the receipt thereof. Either the City Manager or the Community Development Director of City shall have the right to execute any certificate requested by Owner hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

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

10.10 **Indemnification and Hold Harmless.** Owner shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City and its elected and appointed officials, officers, employees, contractors, agents, and representatives (individually, a "City Party," and, collectively, "City Parties") from and against any and all liabilities, obligations, orders, claims, damages, fines, penalties and expenses, including reasonable attorneys' fees and costs (collectively, "Claims"), including Claims for any bodily injury, death, or property damage, resulting directly or indirectly from the development, construction, or operation of the Project and, if applicable, from failure to comply with the terms of this Development Agreement, and/or from any other acts or omissions of Owner under this Development Agreement, whether such acts or omissions are by Owner or any of Owner's contractors, subcontractors, agents, or employees; provided that Owner's obligation to indemnify and hold harmless (but not Owner's duty to defend) 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 10.10 includes any and all present and future Claims arising out of or in any way connected

with Owner's or its contractors' obligations to comply with any applicable State Labor Code requirements and implementing regulations of the Department of Industrial Relations pertaining to "public works" (collectively, "Prevailing Wage Laws"), including all claims that may be made by contractors, subcontractors, or other third-party claimants pursuant to Labor Code Sections 1726 and 1781. Owner's obligations under this Section 10.10 shall survive expiration or earlier termination of this Development Agreement.

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

(a) City and Owner 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 consideration and/or approval of this Development Agreement or the Approvals or challenging the validity of any provision of this Development 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. Owner shall take the lead role defending such Litigation Challenge and may elect to be represented by the legal counsel of its choice, subject to City's right to approve counsel, with the costs of such representation, including Owner's administrative, legal, and court costs, paid solely by Owner. City may elect to retain separate counsel to monitor Owner's defense of the Litigation Challenge at Owner's expense. 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.

(b) Owner shall indemnify, defend, release and hold harmless City Parties from and against any damages, attorneys' fees, or cost awards, including 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, including, but not limited to, those arising out of or in connection with approval of this Development Agreement or the Approvals. Any proposed settlement of a Litigation Challenge shall be subject to City's and Owner's approval not to be unreasonably withheld, conditioned, or delayed. If the terms of the proposed settlement would constitute an amendment or modification of this Development Agreement or any Approvals, the settlement shall not become effective unless such amendment or modification is approved by City and Owner in accordance with applicable law, and City reserves its full legislative discretion with respect to any such City approval. If Owner elects not to contest or defend such Litigation Challenge, City shall have no obligation to do so, but Owner 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, costs the City incurs to void approval of this Development Agreement

or the Approvals or take other action as resolution of the Litigation Challenge may direct. Owner shall reimburse City for its 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. Owner's obligations under this Section 10.11 shall survive expiration or earlier termination of this Development Agreement.

10.12 **Intentionally Omitted.**

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

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

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

(a) 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 Development Agreement.

(b) The execution and delivery of this Development 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.

(c) This Development Agreement is a valid obligation of City and is enforceable in accordance with its terms.

During the Term of this Development Agreement, City shall, upon learning of any fact or condition which would cause of any of the warranties and representations in this Section 10.15 not to be true, immediately give written notice of such fact or condition to Owner.

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

(a) Owner is duly organized and validly existing under the laws of the State of California, 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 Owner under this Development Agreement.

(b) The execution and delivery of this Development Agreement and the performance of the obligations of Owner hereunder have been duly authorized by all necessary corporate action and all necessary corporate authorizations have been obtained.

(c) This Development Agreement is a valid obligation of Owner and is enforceable in accordance with its terms.

(d) Owner 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 Owner's creditors; (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Owner's assets; (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Owner's assets; or (v) admitted in writing its inability to pay its debts as they come due.

During the Term of this Development Agreement, Owner shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 10.16 not to be true, immediately give written notice of such fact or condition to City.

10.17 **Counterparts.** This Development Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.18 **Waivers.** Notwithstanding any other provision in this Development Agreement, any failures or delays by any party in asserting any of its rights and remedies under this Development 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 Development 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.

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

10.20 **Venue.** Any legal action regarding this Development 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.

10.21 **Surviving Provisions.** In the event this Development Agreement is terminated, neither party shall have any further rights or obligations hereunder, except for those obligations of Owner which by their terms survive expiration or termination hereof, including, but not limited to, those obligations set forth in Sections 2.8, 6.8, 10.10, and 10.11.

10.22 **Construction of Agreement.** All parties have been represented by counsel in the preparation and negotiation of this Development Agreement, and this Development 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 Development 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.

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

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

By: _____
Kimbra McCarthy
City Manager

Attest: _____
~~Silvia Vonderlinden~~ Heather Glaser
~~Interim~~ City Clerk

"Owner":
SI 33, LLC,
a California limited liability company

By: _____

Name: Matthew Sinnott

Title: CEO

77-3431664
Taxpayer I.D. Number

APPROVED AS TO CONTENT:

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

FINANCIAL APPROVAL:

_____
Name: Suzanne Niederhoffer
ABS Finance and Administrative Services Director

APPROVED AS TO FORM:

_____
Name: Sandra Lee
SV ASST City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
} **ss.**
County of Santa Clara }

On Feb 24, 2021, before me, KATIE PETTEWAY, a Notary Public in and for said County and State, personally appeared **MATTHEW W. SONSINI,** who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is~~/are~~ subscribed to the within instrument and acknowledged to me that he~~/she/they~~ executed the same in his~~/her/their~~ authorized capacity(~~ies~~), and that by his~~/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal

KATIE PETTEWAY
Notary Public - California
Santa Clara County
Commission # 2315250
My Comm. Expires Jan 8, 2024

Katie Petteway

NOTARY PUBLIC, STATE OF CALIFORNIA
My Commission #2315250
Expires: January 8, 2024

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara

On May 21, 2021, before me, Heather Glaser, City Clerk, personally appeared Aarti Shrivastava, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ **(Seal)**
Heather Glaser, City Clerk
City of Mountain View
Government Code § 40814

EXHIBIT A

LEGAL DESCRIPTION

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

PARCEL 1:

COMMENCING AT THE MOST SOUTHERLY CORNER OF THAT CERTAIN 3.465 ACRE TRACT CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED IN BOOK 3491 OFFICIAL RECORDS, PAGE 93, RECORDS OF SANTA CLARA COUNTY, SAID POINT BEING IN THE NORTHWESTERLY LINE OF THAT CERTAIN 25 FOOT STRIP OF LAND DESCRIBED IN THE DEED OF A. R. ANDERSON, ET UX, BY DEED RECORDED IN BOOK 2418 OFFICIAL RECORDS, PAGE 630, RECORDS OF SANTA CLARA COUNTY, DISTANT ON SAID NORTHWESTERLY LINE NORTH 16° 18' EAST 611.07 FEET FROM THE MOST WESTERLY CORNER OF SAID 25 FOOT STRIP OF LAND; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID 3.465 ACRE TRACT, NORTH 50° 42' 49" WEST 16.29 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT 15 FEET NORTHWESTERLY AT RIGHT ANGLES FROM SAID NORTHWESTERLY LINE OF SAID 25 FOOT STRIP OF LAND AND THE TRUE POINT OF BEGINNING OF THE PARCEL OF LAND TO BE DESCRIBED; THENCE ALONG SAID PARALLEL LINE SOUTH 16° 18' WEST 476.36 FEET; THENCE NORTH 73° 42' WEST 284.39 FEET; THENCE NORTH 16° 18' EAST 592.37 FEET TO A POINT IN THE SAID SOUTHWESTERLY LINE OF SAID 3.465 ACRE TRACT CONVEYED TO THE STATE OF CALIFORNIA, THENCE ALONG SAID SOUTHWESTERLY LINE OF SAID 3.465 ACRE TRACT SOUTH 66° 32' 49" EAST 15.12 FEET AND SOUTH 50° 42' 49" EAST 292.63 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE MOST EASTERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED TO MARK R. TUBAN, ET AL, BY DEED RECORDED IN BOOK 4019, OFFICIAL RECORDS, PAGE 322, SANTA CLARA COUNTY RECORDS; THENCE NORTH 50° 42' 49" WEST 64.66 FEET; THENCE SOUTH 46° 12' 10" EAST 35.99 FEET; THENCE SOUTHEASTERLY ON A TANGENT CURVE TO THE LEFT OF RADIUS 382.40 FEET; THROUGH A CENTRAL ANGLE OF 4° 34' 19" FOR AN ARC DISTANCE OF 30.51 FEET; THENCE NORTH 16° 18' EAST 4.36 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE MOST NORTHERLY CORNER OF THAT CERTAIN PARCEL OF LAND CONVEYED TO MARK R. TUBAN, ET AL, BY DEED RECORDED IN BOOK 4019, OFFICIAL RECORDS, PAGE 322, SANTA CLARA COUNTY RECORDS; THENCE S. 66° 32' 49" E. 15.12 FEET; THENCE S. 50° 42' 29" E. 14.66 FEET; THENCE N. 66° 32' 49" W. 28.72 FEET; THENCE N. 16° 18' E., 4.03 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF THAT CERTAIN PARCEL OF LAND CONVEYED TO MARK R. TUBAN, ET AL, BY DEED RECORDED IN BOOK 4019, OFFICIAL RECORDS, PAGE 322, SANTA CLARA COUNTY RECORDS, DISTANT THEREON S. 16° 18' W. 4.36 FEET FROM THE MOST EASTERLY CORNER OF SAID PARCEL OF LAND; THENCE S. 16° 18' W. 5.43 FEET; THENCE N. 50° 46' 29" W., 2.11 FEET; THENCE NORTHWESTERLY ON A TANGENT CURVE TO THE RIGHT OF RADIUS 387.40 FEET THROUGH A CENTRAL ANGLE OF 4° 34' 19" AN ARC DISTANCE OF 30.91 FEET; THENCE N. 46° 12' 10" W. 99.36 FEET; THENCE S. 50° 42' 49" E. 63.58 FEET; THENCE S. 46° 12' 10" E. 35.99 FEET; THENCE SOUTHEASTERLY ON A TANGENT CURVE TO THE LEFT OF RADIUS 382.40 FEET; THROUGH A CENTRAL ANGLE OF 4° 34' 19" AN ARC DISTANCE OF 30.51 FEET, THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT A POINT IN THE NORTHWESTERLY LINE OF THAT CERTAIN PARCEL OF LAND CONVEYED TO MARK R. TUBAN, ET AL, BY DEED RECORDED IN BOOK 4019, OFFICIAL RECORDS, PAGE 322, SANTA CLARA COUNTY RECORDS, DISTANT THEREON S. 16° 18' W. 4.03 FEET FROM THE MOST NORTHERLY CORNER OF SAID PARCEL OF LAND; THENCE S. 66° 32' 49" E., 28.72 FEET; THENCE S. 50° 42' 49" E. 18.32 FEET; THENCE N. 66° 32' 49" W. 45.73 FEET; THENCE N. 16° 18' E., 5.04 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

ALL OF LOT 1, AS SHOWN UPON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON SEPTEMBER 16, 1963 IN BOOK 166 OF MAPS, AT PAGE 41.

EXHIBIT B

PROPERTY DIAGRAM