Attachment 4

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW
APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MOUNTAIN VIEW
AND MERLONE GEIER PARTNERS IX, L.P., FOR THE VILLAGE AT
SAN ANTONIO CENTER PHASE 3 PROJECT ON A 0.99-ACRE SITE LOCATED AT
365-405 SAN ANTONIO ROAD AND 2585-2595 CALIFORNIA STREET

WHEREAS, in order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs and risk of development, the Legislature of the State of California enacted Sections 65864 to 65869.5 of the Government Code, which authorizes a city to enter into a binding, long-term development agreement with any person having a legal or equitable interest in real property, establishing certain development rights in the property; and

WHEREAS, pursuant to Government Code Section 65864, the City of Mountain View ("City") has adopted rules and regulations establishing procedures and requirements for consideration of development agreements, which procedures and requirements are contained in Section 36.54 *et seq*. of the City Code; and

WHEREAS, Merlone Geier Partners IX, L.P., a California limited partnership ("Applicant"), has a legal interest in certain real property consisting of approximately 0.99 acre located at 365 to 405 San Antonio Road and 2585 to 2595 California Street~~,~~ in the City of Mountain View, County of Santa Clara designated as Assessor Parcel Nos. 148-22-005, 148-22-006, 148-22-007, and 148-22-023 (collectively, the "Property"). The Property is located within the San Antonio 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 San Antonio Precise Plan (the "Precise Plan"), adopted December 2, 2014 by Resolution No. 17924; and

WHEREAS, the Applicant proposes to redevelop the Property by demolishing two existing buildings and constructing one new seven-story office building and associated underground parking structure, including approximately 169,282 square feet of office and commercial uses; 12,970 square feet of retail uses; and 280 parking stalls, consistent with the Precise Plan Amendments, Planned Community Permit, Development Review Permit, Heritage Tree Removal Permit and Provisional Use Permit approved by companion Resolution on May 27, 2025 (the "Project"); and

WHEREAS, the City desires to advance the socioeconomic interests of the City and its residents by promoting the productive use of underdeveloped property and encouraging quality development and economic growth, thereby enhancing employment opportunities for residents, and expanding the City's property tax base. The City also desires to establish certainty for the

future development of the Property, which will advance the planning objectives of, and provide benefits to, the City; and

WHEREAS, the City has determined that by entering into this Development Agreement, (1) the City will ensure the productive use of underdeveloped property and foster orderly growth and quality development in the City; (2) development will proceed in accordance with the goals and policies set forth in the General Plan and Precise Plan and will implement the City's stated General Plan and Precise Plan policies; (3) the City will receive substantially increased property tax and sales tax revenues; (4) the City will benefit from increased employment opportunities for residents of the City created by the retail businesses in the commercial space within the Project; and (5) the City will receive the public benefits provided by the Applicant for the residents of the City; and

WHEREAS, on March 23, 2022, the Zoning Administrator conducted a duly noticed public hearing to consider the Addendum and the Development Agreement, and recommended that the City Council approve the Development Agreement based on requisite findings; and

WHEREAS, on May 27, 2025, the City Council conducted a duly noticed public hearing to consider and act upon the Development Agreement and duly considered the Addendum (adopted by companion Resolution on the same date), the previously certified San Antonio Precise Plan Final Environmental Impact Report, and the Development Agreement, the recommendations of the Zoning Administrator, the comments of the public, both oral and written, and all written materials in the record connected therewith;

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

Section 1. On December 2, 2014, the Mountain View City Council certified a Final Environmental Impact Report (SCH No. 2014032001) and adopted CEQA Findings, Mitigation Measures, and a Mitigation Monitoring and Reporting Program, and based thereon adopted the San Antonio Precise Plan. On _____, 2025, by companion Resolution, the City Council adopted an Addendum to the certified Final Environmental Impact Report, which analyzed the potential environmental consequences of the Project. The City Council finds that the Addendum and the previously certified Environmental Impact Report adequately address the potential environmental impacts of the Project; and that

The Project would not create any new or substantially more severe impacts than had been previously identified in the Final Environmental Impact Report. All significant impacts from the Final Environmental Impact Report, as applicable to the Project, would be mitigated to a less-than-significant level with the incorporation of previously adopted mitigation measures and standard City conditions of approval.

Section 2. The City Council of the City of Mountain View hereby makes the following findings to support the Development Agreement pursuant to Sections 36.54.15(a) and 36.54.15(d) of the City Code:

1. The Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the General Plan for the Mixed-Use Center Land Use Designation and the San Antonio Precise Plan, which allow higher intensities and support increased diversity of land uses, with improved bicycle and pedestrian circulation, connections to public transportation, and a mix of commercial land uses serving the neighborhood and region.

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

3. The Development Agreement is in conformity with public convenience, general welfare, and good land use practice because the design of the proposed building and commercial uses are compatible with the development standards and allowable land uses of the San Antonio Precise Plan as well as with surrounding developments.

4. The Development Agreement will not be detrimental to the health, safety, and general welfare of the community because the proposed commercial development is consistent with the policies and development standards of the General Plan, San Antonio Precise Plan, and applicable Building and Fire Codes.

5. The Development Agreement will not adversely affect the orderly development of property or preservation of property values because the development of the Project site with a seven-story, approximately 182,000 square foot commercial structure is compatible with the surrounding developments in the San Antonio Shopping Center and greater San Antonio Precise Plan area.

6. The Development Agreement is needed by the Applicant due to the complexity, cost, or infrastructure requirements for development, to allow for flexibility in the timing and phasing of the Project, because construction of a project of this size and extent would otherwise exceed the City's standard approval and permit extension period necessary, particularly in light of the COVID-19 pandemic.

7. The Development Agreement is advantageous to and benefits the City because the Applicant will provide a $500,000 public benefit fee for the proposed seven-year Development Agreement and other public benefits and fees, including a commitment by the Applicant to provide certain voluntary public benefit contributions pursuant to the San Antonio Precise Plan. The Project will also purchase 150,000 square feet of Transfer of Development Rights ("TDRs")

from the Los Altos School District ("LASD") to help support the LASD and the City's development of a new school site and shared park facilities in the Precise Plan Area. The TDR purchase will provide $19,500,000 in new funds for the LASD project. With the TDRs, the Project will be allowed to have a floor-area-ratio (FAR) of 0.75 FAR, plus 150,000 square feet.

8. The Development Agreement complies with the California Environmental Quality Act (CEQA). An Addendum to the San Antonio Precise Plan (P-40) Certified Final Impact Report (Final EIR) was prepared for the project pursuant to the CEQA Guidelines, which documents the analysis and finding that the Project would not create any new or substantially more severe impacts than had been previously identified in the Final EIR. All significant impacts from the Final EIR, as applicable to the Project, would be mitigated to a less-than-significant level with the incorporation of previously adopted mitigation measures and standard City conditions of approval.

9. The Development Agreement for the Project has been reviewed by the City Attorney.

10. The City has determined that the Project is a development for which a Development Agreement is appropriate. A Development Agreement will improve the potential for the Project to be constructed in an orderly fashion, along with the significant Project benefits, such as the financial contributions by the Applicant, and otherwise achieve the goals and purposes of Chapter 36, Article XVI, Division 14, of the City Code related to Development Agreements, including meeting the required contents of a development agreement as set forth in Section 36.54.20.

11. In exchange for significant public benefits of the Project, the Applicant desires to receive assurances that the City shall grant permits and approvals required for the development of the Project without disruption caused by change in City's planning policies and requirements as set forth in the Development Agreement, following the Project approvals and to allow the Project to remain valid over the projected development period, in accordance with the procedures provided by law and in the Development Agreement, and with extended expiration dates for entitlements up to seven years from the Effective Date as defined in the Development Agreement.

Section 3. The City Council finds that entering into that certain Development Agreement entitled "DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF MOUNTAIN VIEW AND MERLONE GEIER PARTNERS IX, L.P. FOR THE VILLAGE AT SAN ANTONIO CENTER PHASE 3 PROJECT" hereafter is consistent with the City's General Plan, the San Antonio Precise Plan, and the Zoning Ordinance and provides substantial public benefits to persons residing or owning property outside the boundary of the Property, which exceed the exactions for public benefits required in the normal development review process under Federal, State, or local law. The City Council further finds that the Development Agreement is in compliance with the Government Code, Sections 65864 through 65869.5, and Chapter 36, Article XVI, Division 14, of the Mountain View City Code and, therefore, may be approved.

Section 4. The City Council hereby approves the Development Agreement, which shall be dated upon execution by the parties on or following the effective date of this Ordinance.

Section 5. The City Council authorizes and directs the City Manager or designee to execute the Development Agreement in substantially the form attached hereto as Exhibit A, subject to minor technical conforming changes as may be approved by the City Attorney.

Section 6. The provisions of this Ordinance shall be in full force and effect from and after thirty (30) days from and after the date of its final passage.

Section 7. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held invalid or inapplicable by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity or applicability of any other remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 8. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the Ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

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Exhibit: A. Development Agreement

Recording Requested by
and Please Return to:
City Clerk
City of Mountain View
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540
This Instrument Benefits City Only.
No Fee Required. Gov. C. 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF MOUNTAIN VIEW

AND

MERLONE GEIER PARTNERS IX, L.P.

FOR THE VILLAGE AT
SAN ANTONIO CENTER
PHASE 3 PROJECT

_____, ~~2022~~2025

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DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MOUNTAIN VIEW AND MERLONE GEIER PARTNERS IX, L.P.

This~~HIS~~ DEVELOPMENT AGREEMENT ("Development Agreement") is made and entered into this ____ day of _____ 2025~~2022~~, 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 MERLONE GEIER PARTNERS IX, L.P., a California limited partnership ("Owner"), with reference to the following facts and circumstances:~~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, *et* seq. of the Mountain View City Code ("City Code"). This Development Agreement has been processed, considered, and executed in accordance with such procedures and requirements.

C. Owner has a legal interest in certain real property located in the City consisting of approximately 0.99 acre located at 365 and 405 San Antonio Road and 2585 and 2595 California Street, designated as Assessor Parcel Nos. 148-322-005, 148-22-006, 148-22-007, and 148-22-023 (collectively, the "Property"), which Property is more specifically described in ~~the attached~~ Attachment A, and shown on the map in ~~attached as~~ Attachment B, attached hereto and incorporated herein.

D. City and the Los Altos School District ("School District" or "LASD") entered into a Memorandum of Understanding ("Transfer of Development Rights Program"), dated January 29, 2019 ("TDR MOU"), establishing a mechanism to accommodate the School District's acquisition of real property located at 2535 California Street and 350 and 506 Showers Drive ("School Site"), for development of a school facility, public park, and publicly accessible facilities and related uses, to be funded in part by the School District's sale of transfer development rights ("TDRs") to third-party purchasers, and to apply such TDRs to designated receiving sites in order to exceed the floor area that would otherwise be permitted at such sites by the amount of the TDRs without triggering additional public benefit requirements.

E. Pursuant to that certain Transferable Development Rights Purchase and Sale Agreement dated ~~March 8, 2021~~, between [Owner/Owner's assignee] and School District ("TDR Purchase Agreement"), Owner will purchase, or will cause to be purchased by its assignee consistent with this Development Agreement, one hundred fifty thousand (150,000) square feet of TDRs from the School District to help support the School District's and City's development of a new school site and shared park facilities in the San Antonio Precise Plan ("Precise Plan" or "SAPP") area. This will provide for Nineteen Million Five Hundred Thousand Dollars ($19,500,000) in new funds for the LASD project ("TDR Payment"). With the TDRs, the Project (defined below) will be allowed to exceed the Base Floor Area Ratio ("FAR") for a Tier 1 Project located within the Mixed-Use Center Subarea by an additional one hundred fifty thousand (150,000) square feet.

F. Owner desires to redevelop the Property by demolishing two (2) existing buildings on the site and constructing one (1) new seven (7) story office building and associated underground parking structure on the Property ("Project"). The Project includes approximately one hundred sixty-nine thousand three hundred eighty-two (169,382) square feet of office and commercial uses, approximately twelve thousand nine hundred seventy (12,970) square feet of retail uses, and approximately two hundred eighty~~-three~~ (280~~3~~) parking stalls. The Project will use up to one hundred fifty thousand (150,000) square feet of TDRs. The completed Project will have approximately one hundred eighty-two thousand three hundred fifty-two (182,352) square feet of floor area.

G. The Project will also provide significant contributions to the community and City, including: (a) the TDR Payment which will provide significant funds for the development of the new School Site and associated public park and publicly accessible facilities that will benefit City residents; (b) the Public Benefit Fee in the amount of Five Hundred Thousand Dollars ($500,000) as set forth in Section 3.1 of this Development Agreement; (c) the SAPP public benefit contribution as required for Tier 1 projects under the SAPP exceeding Base FAR; and (d) approximately eighteen thousand fifty-three (18,053) square feet of publicly accessible open space located on the ground floor of the new office building, a public plaza located at the corner of California Street and San Antonio Road, and outdoor seating along Promenade Lane.

H. The Property is located within the San Antonio Change Area under City's 2030 General Plan (the "General Plan"), which was adopted on July 10, 2012 by Resolution No. 17711. The area is subject to the San Antonio Precise Plan ~~(the "Precise Plan" or "SAPP")~~ adopted December 2, 2014 by Resolution No. 17924. Under the General Plan, the Property is located within the Mixed-Use Center Subarea and the Northwest San Antonio Master Plan area, which allows development at a FAR of up to 2.35, of which up to 0.75 FAR can be office or commercial, for a Tier 1 FAR project.

I. 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. **Environmental Compliance.** 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 City's Environmental Planning Commission (the "Planning Commission"), the City Council approved an Addendum to the San Antonio Precise Plan Final Environmental Impact Report ("SAPP EIR") finding that the Project will not result in new or more significant impacts than those previously identified in the SAPP EIR and further determined that that the Project and this Development Agreement will, as a whole, be consistent with the objectives, policies, and general land uses and programs specified in the General Plan and the Precise Plan.

2. **San Antonio Precise Plan Amendment.** Following review and recommendation by the Planning Commission, and after a duly noticed public hearing and approval of the Addendum, the City Council, on _____, 2025~~2022~~, approved an amendment to the Precise Plan pursuant to Section 36.50.60, *et seq*. of the City Code by Resolution No. _____ (the "SAPP Amendment").

3. **Planned Community Permit.** Following review and recommendation by the Planning Commission, and after a duly noticed public hearing and approval of the Addendum, the City Council, on _____, 2025~~2022~~, approved a Planned Community Permit pursuant to Section 36.50.30, *et seq*. of the City Code by Resolution No. _____ (the "Planned Community Permit").

4. **Heritage Tree Removal Permit.** Following review and recommendation by the Planning Commission, and after a duly noticed public hearing and approval of the Addendum, the City Council, on _____, 2025~~2022~~, approved a Heritage Tree Removal Permit for the removal of five (5) Heritage trees from the Property by Resolution No. _____ (the "Heritage Tree Removal Permit").

5. **Development Review Permit.** Following review and recommendation by the Planning Commission, and after a duly noticed public hearing and approval of the Addendum, the City Council, on _____, 2025~~2022~~, approved a Development Review Permit for the Project by Resolution No. _____ (the "Development Review Permit").

6. **Provisional Use Permit.** Following review and recommendation by the Planning Commission, and after a duly noticed public hearing and approval of the Addendum, the City Council on _____, 2025~~2022~~, approved a Provisional Use Permit for the Project by Resolution No. _____.

7. **Enacting Ordinance.** The Enacting Ordinance as defined in Recital Q below.

The approvals described in this Recital I are collectively referred to as the "Existing Approvals." The Existing Approvals, together with any Subsequent Approvals (as defined in Section 2.3), are referred to herein collectively as the "Approvals."

J. City is desirous of encouraging quality economic growth and expanding its employment base within City, thereby advancing the interests of its residents and community, 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.

K. 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 is 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.

L. 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.

M. City will receive a public benefit fee in the amount of Five Hundred Thousand Dollars ($500,000) to be paid to City by Owner as 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.

N. 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.

O. 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.

P. 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.

Q. Following a duly noticed public hearing, this Development Agreement was approved by the City Council of City by Ordinance No. _____ ("Enacting Ordinance"), which was introduced on _____, 2025~~2022~~ and finally adopted on _____, 2025~~2022~~ and became effective thirty (30) days thereafter, and was duly executed by the parties as of _____, 2025~~2~~.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, 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 extended pursuant to Section 6.3(b) or 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; (b) Precise Plan; (c) the City Code; (d) 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 (e) 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 and the Approvals, 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; Development Standards.** 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 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 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 basis, which shall mean all real property within the territorial limits of City, or within the geographic boundaries of the Precise Plan area 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 basis or within the geographic boundaries of the Precise Plan area 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 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 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). 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 Citywide 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 applicable Mitigation Measures as set forth in the SAPP EIR and the Mitigation Monitoring and Reporting Program (except for any Mitigation Measures that are expressly identified as the responsibility of a different party or entity), 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.

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 0.75 for a Tier 1 office/commercial project located within the Mixed-Use Center subarea as set forth under the Precise Plan plus an additional one hundred fifty thousand (150,000) square feet of development authorized by the TDRs to be acquired by Owner (or its assignee) from LASD as provided in Section 3.1(b) below. For the avoidance of doubt, the parties acknowledge and agree that the one hundred fifty thousand (150,000) square feet of TDRs do not count toward/may be allowed to exceed the 0.75 FAR maximum for the Project.

ARTICLE III —PUBLIC BENEFITS

3.1 **DA 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 Five Hundred Thousand Dollars ($500,000) in 202~~3~~5 dollars subject to annual escalation as described herein (the "Public Benefit Fee") to City ~~within thirty-five (35) days after the Effective Date of this Development Agreement~~. ~~-~~Any unpaid portions of t~~T~~he Public Benefit Fee shall be increased annually on July 1 of each year based on percentage increases in the "Consumer Price Index" (the San Francisco-Oakland-San Jose Consumer Price Index, All Items (1982-84=100) for All Urban Consumers (CPI-U), published by the Bureau of Labor Statistics for the U.S. Department of Labor Consumer Price Index for the San Francisco Bay Area, or if such index is no longer available then a comparable index as reasonably selected by City).

~~(a)~~ The Public Benefit Fee shall be paid in two installments. The first installment, in the amount of Fifty Thousand ~~————~~Dollars ($50,000~~————~~), shall be paid within thirty-five (35) days after the Effective Date of this Development Agreement. The second installment, of Four Hundred Fifty Thousand ~~————~~Dollars ($450,000~~————~~), plus any applicable escalation factor, shall be paid within ten (10) days of the date on which "Final Approval" of the Existing Approvals occurs. "Final Approval" shall mean the Existing Approvals have been approved by the City and (i) all applicable administrative appeal and judicial challenge periods for the Existing Approvals, including but not limited to the ninety day statute of limitations under Government Code section 65009(c), have lapsed with no appeal or judicial challenge with respect to the Existing Approvals ("Challenge") having been filed, or if any Challenge has been timely filed, such Challenge has been finally resolved in a manner that upholds the Existing Approvals; and (ii) expiration of the time for submitting a referendum petition for any Existing Approval or, if a referendum petition relating to any Existing Approval is timely and duly circulated and filed, certified as valid and the City holds an election, the date the

election result on the ballot measure are certified by the City Council in the manner provided by applicable City laws reflecting the ~~–~~approval by voters of the referenced Existing Approval. However, if a Challenge has been filed and has not been finally resolved by the third ~~second~~ anniversary of the Effective Date of this Development Agreement, Owner shall make payment of the second installment on the date that is the third ~~second~~ anniversary of the Effective Date of the Development Agreement. If Owner fails to pay such Public Benefit Fee or any part thereof, 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~~ that the purchase of TDRs by Owner or its assignee from LASD is authorized by the Memorandum of Understanding between the City and LASD, dated January 29, 2019 ("TDR MOU"). ~~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 (or shall cause its assignee to complete the purchase) of one hundred fifty thousand (150,000) square feet of TDRs from LASD by paying, or causing its assignee to pay, the TDR Payment to LASD and providing proof of TDR transfer, consistent with the Project's Conditions of Approval, prior to the issuance of any building permit. If Owner fails to either pay or cause its assignee to pay, as applicable, 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) Public Benefits Exceed Precise Plan Requirements. The parties acknowledge and agree that the development of the Project in accordance with this Development Agreement provides substantial public benefits to City, which includes Owner's payment of the Public Benefit Fee and TDR Payment, beyond those required by the existing requirements under the Precise Plan.

3.2 **SAPP Public Benefit Contribution.** In addition to the public benefits provided under Section 3.1, Owner shall pay to City the public benefit contribution amount in compliance with the SAPP which requires Tier 1 development projects to provide a public benefit value proportional to the proposed development intensity above Base FAR ("SAPP Public Benefit Contribution"). The SAPP Public Benefit Contribution is based on the public contribution amount adopted by City Council Resolution No. 17925, subject to annual adjustment based on the Consumer Price Index, and the effective rate (dollars per net new square feet over Base FAR) and the total amount of the SAPP Public Benefit Contribution will be determined as of the date of payment. Owner shall provide the SAPP Public Benefit Contribution to City prior to issuance of the first foundation permit, excavation permit, or new structure building permit for the Project. The parties acknowledge that the SAPP Public Contribution set forth under this subsection satisfies the Owner's Tier 1 public benefit requirements under the SAPP for the Project, and further, that the one hundred fifty thousand (150,000) square feet of TDRs that Owner or its

assignee have purchased from the School District is~~are~~ not subject to the Tier 1 public benefit requirements under the SAPP.

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, except where provided herein to the contrary: -(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 **Meet and Confer.** Before sending a Notice of Breach in accordance with Section 5.2, the party asserting that the other party has failed to perform or fulfill its obligations under this Development Agreement shall first attempt to meet and confer with the other Party to discuss the alleged failure and shall permit such Party not less than thirty (30) days to respond to or cure such alleged failure.

5.4 **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 Development 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; or a local, State, or Federal declaration of emergency based on an epidemic or pandemic, including any quarantine or other health-related orders, directives, regulations, laws, or other requirements implemented in response to such epidemic or pandemic (each a "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 Legal Action or Referendum. If any litigation is filed challenging this Development Agreement, the Addendum, or an Approval having the direct or indirect effect of delaying this Development Agreement or any Approval, including any challenge to the validity of this Development Agreement or any of its provisions, or if this Agreement or an Approval is suspended pending the outcome of an electoral vote on a referendum, then the Term of this Agreement and all Approvals shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension but in no event shall an extension of the Term permitted under this section exceed two (2) years. The parties shall document the start and end of an extension pursuant to this Section within thirty (30) days of the applicable dates.

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, and amendments to this Development Agreement. City shall furnish, upon written requests, copies of invoices, bills, or other supporting documentation reasonably requested by Owner with respect to City costs subject to reimbursement pursuant to this Section. Owner's obligations under this Section 6.8 shall survive expiration or earlier termination of this Development Agreement.

6.9 **Minor Modifications.**

(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 or minor modification through an 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 or approval by City Council.

(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 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 **Major Modifications; 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. 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.**

(a) 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, the conveyance of Owner's interest in the

Property related thereto. Upon execution of an assignment and assumption agreement in substantially the form provided as Attachment C ("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.

(b) Notwithstanding Section 8.1(a), the City's consent shall not be required for any assignment of this Development Agreement in whole or in part as to the Property, in connection with any sale, transfer, or conveyance thereof to Brookfield Properties, or any of its respective affiliates, if such assignment occurs ~~by December 31, 2025~~within three (3 years) of the Final Approval, as defined in Section 3.1(a). Owner shall deliver to the City a fully executed Assignment and Assumption Agreement and shall provide City with written notice of the effective date of a transfer of any right, title, or interest in any portion of the Property within ten (10) days after such effective date. Upon the execution and delivery of the Assignment and Assumption Agreement, Owner shall be released from any prospective liability or obligation under the Development Agreement with respect to those rights, duties, obligations or interests and real property so transferred.

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 or mezzanine lender ("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. Notwithstanding Section 8.1~~(s)~~, the City's consent shall not be required for any assignment of this Development Agreement, in whole or in part as to the Property, to a Mortgagee who acquires title to all or a portion of the Property as a result of foreclosure proceedings.

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. In the event that two or~~f~~ more Mortgagees encumbering all or any portion of the Property each exercise their rights under this Article IX and there is a conflict that renders it impossible to comply with all requests of Mortgagees, the Mortgagee with the Mortgage most senior in priority, as applicable, shall prevail.

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, but not the obligation, for a period up to sixty (60) days after the Owner's receipt of ~~such notice~~a Notice of Breach from City ~~during the same period available to Owner~~ to cure or remedy, or to commence to cure or remedy, the ~~event of~~ default. ~~If any such default or claimed or the areas of noncompliance cannot, with diligence, be remedied or cured within such sixty (60) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such default or noncompliance if such Mortgagee commences cure during such sixty (60) day period, and thereafter diligently pursues and completes such cure. set forth in City's Notice of Breach.~~ If the nature of the alleged breach is nonmonetary and such that it cannot reasonably be cured within such time 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.

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.**

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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
City of Mountain View
Attn: City Attorney
500 Castro Street—P.O. Box 7540
Mountain View, CA 94039-7540

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

Owner: Merlone Geier Partners IX, L.P.
Attn: David Geiser
4365 Executive Drive, Suite 1400
San Diego, CA 92121

With a copy to: Perkins Coie LLP
Attn: Matthew Gray
505 Howard Street, Suite 1000
San Francisco, CA 94105

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:

Attachment A—Legal Description of the Property
Attachment B—Diagram of the Property
Attachment C—Assignment and Assumption Agreement

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 which shall not be unreasonably conditioned or withheld) 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 shall promptly notify Owner of any claim, action, or proceeding within the scope of Section 10.9, and 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, which approval shall not be unreasonably withheld or delayed, 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

By: _____
Kimbra McCarthy
City Manager

Attest: _____
Heather Glaser
City Clerk

APPROVED AS TO CONTENT:

_____
~~Aarti Shrivastava~~Christian Murdock
~~Assistant City Manager/~~Community
~~—~~Development Director

FINANCIAL APPROVAL:

_____
~~Jesse Takahashi~~Derek Rampone
Finance and Administrative
Services Director

APPROVED AS TO FORM:

_____
_____
City Attorney

"OWNER":
MERLONE GEIER PARTNERS IX, L.P.,
a California limited partnership

By: _____

Print Name: _____

Title: _____

_____
Taxpayer I.D. Number

ATTACHMENT A
PROPERTY DESCRIPTION

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

PARCEL A:
BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF SAN ANTONIO ROAD, DISTANT THEREON SOUTH 25° 36' WEST 140 FEET FROM AN OAK STUMP MARKED WITH THREE NOTCHES AT THE MOST NORTHERLY CORNER OF THAT CERTAIN 12 1/2 ACRE TRACT OF LAND DESCRIBED IN THE DEED FROM ALICE F. MAXWELL TO E. C. THOITS, ET AL, DATED JANUARY 22, 1949 AND RECORDED JANUARY 26, 1949 IN BOOK 1737 OF OFFICIAL RECORDS, PAGE 233; THENCE FROM SAID POINT OF BEGINNING AND RUNNING PARALLEL WITH THE NORTHERLY BOUNDARY LINE OF SAID 12 1/2 ACRE PARCEL OF LAND SOUTH 64° 13' EAST 200 FEET; THENCE PARALLEL WITH SAID LINE OF SAN ANTONIO ROAD SOUTH 25° 36' WEST 60 FEET; THENCE PARALLEL WITH THE AFORESAID NORTHERLY BOUNDARY LINE OF SAID 12 1/2 ACRE PARCEL OF LAND, NORTH 64° 13' WEST 200 FEET TO THE SAID SOUTHEASTERLY LINE OF SAN ANTONIO ROAD; THENCE ALONG SAID SOUTHEASTERLY LINE, NORTH 25° 36' EAST 60 FEET TO THE POINT OF BEGINNING AND BEING A PORTION OF THE RANCHO RINCON DE SAN FRANCISQUITO AND FURTHER BEING A PART OF THE 24.62 ACRE TRACT OF LAND SHOWN AND DELINEATED UPON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, IN BOOK 21 OF MAPS, PAGE 23.

PARCEL B:
BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF SAN ANTONIO ROAD, AS SAID LINE WAS ESTABLISHED BY DEED FROM RUDOLPH S. MALMGREN ET UX, TO THE CITY OF MOUNTAIN VIEW, A MUNICIPAL CORPORATION, DATED NOVEMBER 17, 1959, RECORDED DECEMBER 14, 1959 IN BOOK 4637 OFFICIAL RECORDS, PAGE 25, SANTA CLARA COUNTY RECORDS WITH THE SOUTHWESTERLY LINE OF THAT CERTAIN TRACT OF LAND DESCRIBED IN THE DEED FROM E. C. THOITS, ET AL, TO RUDOLPH S. MALMGREN ET UX, DATED APRIL 06, 1951, RECORDED APRIL 06, 1951 IN BOOK 2187 OF OFFICIAL RECORDS, PAGE 177, SANTA CLARA COUNTY RECORDS; THENCE FROM SAID POINT OF BEGINNING SOUTH 64° 18' EAST ALONG SAID SOUTHWESTERLY LINE OF LAND SO DESCRIBED IN THE DEED TO SAID MALMGREN, FOR A DISTANCE OF 165.00 FEET; THENCE NORTH 25° 36' EAST AND PARALLEL WITH THE CENTER LINE OF SAN ANTONIO ROAD FOR A DISTANCE OF 94.94 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF CALIFORNIA STREET, AS SAID LINE WAS ESTABLISHED IN THE DEED TO SAID CITY OF MOUNTAIN VIEW ABOVE REFERRED TO; THENCE NORTH 64° 18' WEST ALONG SAID SOUTHWESTERLY LINE OF CALIFORNIA STREET FOR A DISTANCE OF 134.95 FEET; THENCE WESTERLY ALONG AN ARC OF A CURVE TO THE LEFT, TANGENT TO THE PRECEDING COURSE WITH A RADIUS OF 30.00 FEET THROUGH A CENTRAL ANGLE OF 90° 06' FOR AN ARC DISTANCE OF 47.18 FEET TO A POINT IN THE SAID SOUTHEASTERLY LINE OF SAN ANTONIO ROAD; THENCE SOUTH 25° 36' WEST ALONG SAID LAST MENTIONED LINE 64.89 FEET TO THE POINT OF BEGINNING, AND BEING A PORTION OF THE RANCHO RINCON DE SAN FRANCISQUITO.

PARCEL C:
A PORTION OF RANCHO RINCON DE SAN FRANCISQUITO, AND A PORTION OF THE 12-1/2 ACRE TRACT OF LAND DESCRIBED IN THE DEED TO E. C. THOITS, ET AL, RECORDED JANUARY 26, 1949, BOOK 1737 OFFICIAL RECORDS, PAGE 233, SANTA CLARA COUNTY RECORDS, AND DESCRIBED AS FOLLOWS: COMMENCING ON THE ORIGINAL SOUTHEAST LINE OF SAN ANTONIO AVENUE AS IT FORMERLY EXISTED 50 FEET WIDE, DISTANCE THEREON, SOUTH 25° 36' WEST 40 FEET FROM THE NORTHERLY CORNER OF SAID 12-1/2 ACRE TRACT; THENCE SOUTH 64° 18' EAST PARALLEL WITH THE NORTHEAST LINE OF SAID 12-1/2 ACRE TRACT, 200 FEET TO THE TRUE POINT OF BEGINNING; THENCE FROM SAID TRUE POINT OF BEGINNING, SOUTH 64° 18' EAST PARALLEL WITH THE NORTHEAST LINE OF SAID 12-1/2 ACRE TRACT, 100 FEET; THENCE SOUTH 25° 36' WEST PARALLEL WITH SAID SOUTHEAST LINE OF SAN ANTONIO AVENUE, 100 FEET; THENCE NORTH 64° 18' WEST PARALLEL WITH THE NORTHEAST LINE OF SAID 12-1/2 ACRE TRACT, 100 FEET, TO THE SOUTHERLY CORNER OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO SHELL OIL COMPANY, RECORDED JUNE 14, 1961, BOOK 5198 OFFICIAL RECORDS, PAGE 275; THENCE NORTH 25° 36' EAST ALONG THE SOUTHEAST LINE OF SAID SHELL OIL COMPANY PARCEL AND ITS NORTHEASTERLY PROLONGATION, 100 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL D:
PARCEL 4 AS SHOWN ON THE PARCEL MAP FILED FOR RECORD SEPTEMBER 28, 2015 IN BOOK 887, PAGES 12-14 OF MAPS, SANTA CLARA COUNTY RECORDS.

PARCEL D-1:
RIGHTS AND EASEMENTS AS GRANTED IN THAT CERTAIN INSTRUMENT ENTITLED "RECIPROCAL PARKING AGREEMENT" RECORDED APRIL 11, 1974 IN BOOK 0844, PAGE 698, OFFICIAL RECORDS, AS MODIFIED BY THAT CERTAIN FIRST AMENDMENT TO RECIPROCAL PARKING AGREEMENT RECORDED OCTOBER 27, 2011 AS INSTRUMENT NO. 21386632 OF OFFICIAL RECORDS.

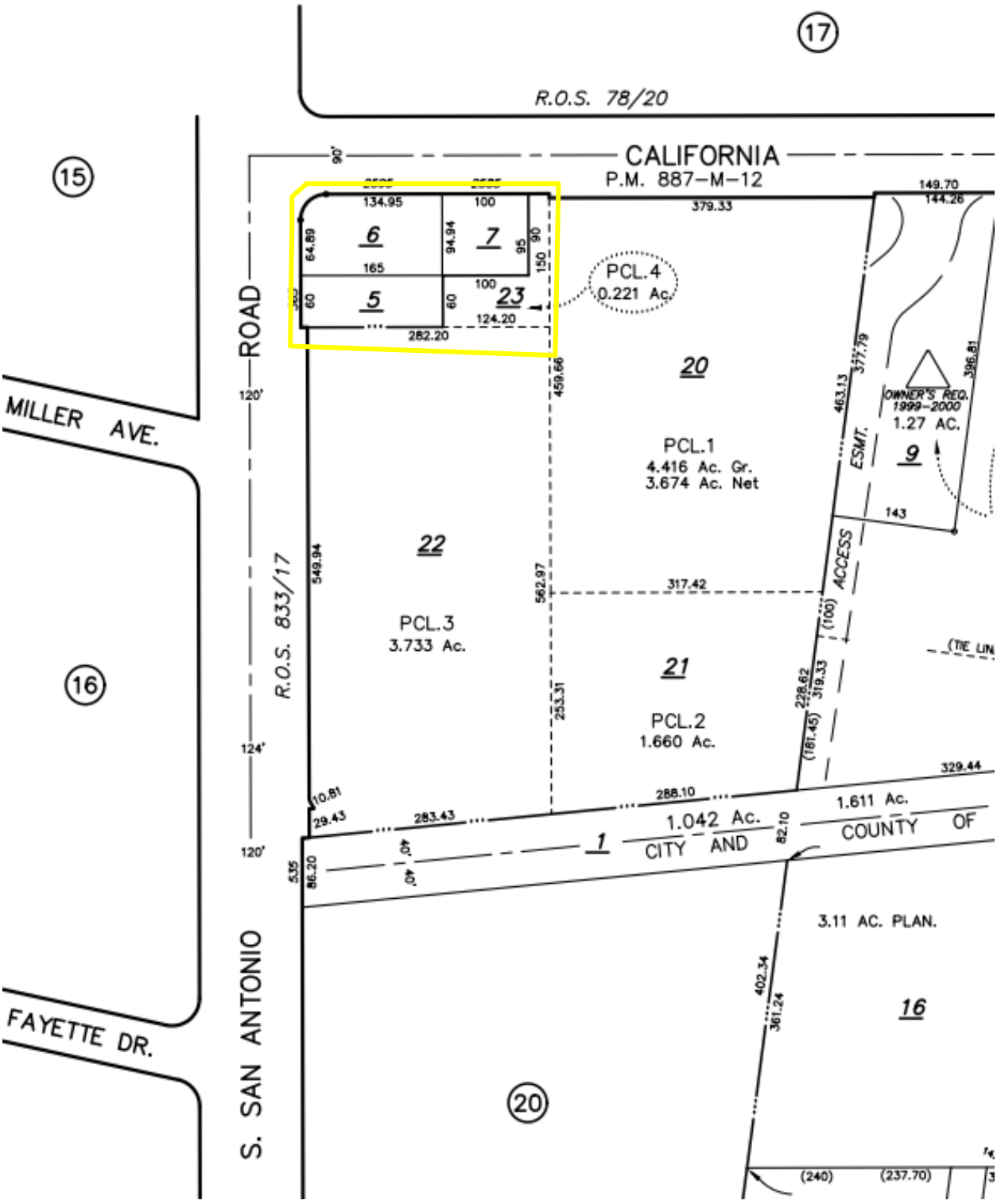
PARCEL D-2:
ALL RIGHTS IN AND TO THE USE OF THE PARCEL DESCRIBED BELOW, CREATED AND RESERVED BY THE DEED FROM EDWARD D. THOITS, WILLIS K. THOITS AND WARREN R. THOITS, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF EDWARD C. THOITS, ALIAS, DECEASED AND HAZEL A. THOITS TO CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION, DATED NOVEMBER 06, 1951 AND RECORDED JANUARY 21, 1952 IN BOOK 2352 OF OFFICIAL RECORDS, AT PAGE 368, SANTA CLARA COUNTY, RECORDS, FOR THE BENEFIT OF THE GRANTORS THEREIN, SAID PARCEL BEING DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIPE SET ON THE SOUTHEASTERLY LINE OF SAN ANTONIO AVENUE (50.00 FEET IN WIDTH) DISTANT THEREON SOUTH 25° 36' WEST 518.52 FEET FROM AN IRON PIPE SET AT THE POINT OF INTERSECTION THEREOF WITH THE SOUTHEASTERLY PROLONGATION OF THE CENTER LINE OF MILLER AVENUE AND FROM WHICH POINT OF BEGINNING A CONCRETE MONUMENT BEARS SOUTH 69° 43' 23" EAST 0.27 FEET; THENCE FROM SAID POINT OF BEGINNING NORTH 25° 36' EAST ALONG SAID SOUTHEASTERLY LINE OF SAN ANTONIO AVENUE 80.35 FEET TO AN IRON PIPE FROM WHICH A CONCRETE MONUMENT BEARS SOUTH 69° 43' 23"

EAST 0.28 FEET; THENCE SOUTH 69° 43’ 23” EAST 613.66 FEET TO AN IRON PIPE SET AT THE SOUTHERNMOST CORNER OF LOT NO. 3, AS SAID LOT IS SHOWN UPON THE RECORD OF SURVEY MAP HEREINAFTER REFERRED TO AND FROM WHICH LAST MENTIONED IRON PIPE A CONCRETE MONUMENT BEARS NORTH 69° 43’ 23” WEST 0.60 FEET; THENCE SOUTH 33° 16’ 56” WEST 82.10 FEET TO AN IRON PIPE WHICH BEARS SOUTH 69° 43’ 23” EAST FROM THE POINT OF BEGINNING AND FROM WHICH LAST MENTIONED IRON PIPE A CONCRETE MONUMENT BEARS NORTH 69° 43’ 23” WEST 0.55 FEET; THENCE NORTH 69° 43’ 23” WEST 602.64 FEET TO THE POINT OF BEGINNING. BEING SHOWN UPON THAT CERTAIN MAP ENTITLED “RECORD OF SURVEY PROPERTY OF THOITS BROS. INC., EDWARD D. THOITS, TRUSTEE AND WARREN R. THOITS, TRUSTEE BEING A PORTION OF THE RANCHO RINCON DE SAN FRANCISQUITO” WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, STATE OF CALIFORNIA, ON FEBRUARY 04, 1957 IN BOOK 78 OF MAPS, AT PAGE 20.

APN: 148-22-005; 148-22-006; 148-22-007; 148-22-023

ATTACHMENT B
PROPERTY DIAGRAM



ATTACHMENT C
FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

RECORDING REQUESTED BY
CITY CLERK
OF THE CITY OF MOUNTAIN VIEW
(Exempt from Recording Fees
Pursuant to Government Code
Section 27383)
AND WHEN RECORDED MAIL TO:
City Clerk
City of Mountain View
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

ASSIGNMENT AND ASSUMPTION AGREEMENT
RELATIVE TO DEVELOPMENT AGREEMENT FOR [_____]

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter, the "**Assignment**") is entered into this _____ day of _____ 20__, by and between_____, a _____ ("**Assignor**") and _____, a _____ ("**Assignee**").

RECITALS

A. _____, a _____ and the City of Mountain View, a California charter city and municipal corporation of the State of California (the "**City**"), entered into that certain Development Agreement (the "**Development Agreement**") dated as of _____, 20__ for reference purposes, with respect to certain real property owned by Assignor, as such property is more particularly described in the Development Agreement (the "**Project Site**"). The Development Agreement was recorded in the Official Records of the County of Santa Clara on _____ as Document No. _____.

B. The Development Agreement provides that, subject to the terms and requirements set forth therein, Owner (Assignor) has the right to: (i) transfer all or a portion of the Property; (ii) assign all of its rights, title, interest, and obligations under the Development Agreement to a transferee with respect to the portions of the Property transferred to the transferee; and (iii) upon the execution and delivery of an approved Assignment and Assumption Agreement, to be released from any prospective liability or obligation under the Development Agreement with

respect to those rights, duties, obligations or interests and real property so transferred, except as otherwise provided in the Development Agreement.

C. Assignor intends to convey certain real property as more particularly identified and described on Exhibit A attached hereto (hereafter the "**Transferred Property**") to Assignee. The Transferred Property is subject to the Development Agreement.

D. Assignor desires to assign and Assignee desires to assume Assignor's right, title, interest, burdens, and obligations under the Development Agreement with respect to and as related to the Transferred Property, as more particularly described below.

ASSIGNMENT AND ASSUMPTION

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. **Defined Terms.** Initially capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Development Agreement.

2. **Assignment of Development Agreement.** Assignor hereby assigns to Assignee, effective as of the later of: (i) Assignor's conveyance of the Transferred Property to Assignee; or (ii) the date on which City receives a copy of the fully executed Assignment and Assumption Agreement, all of the rights, title, interest, burdens, and obligations of Assignor under the Development Agreement with respect to the Transferred Property (the "Assigned and Assumed Obligations"). Assignor retains all the rights, title, interest, burdens, and obligations under the Development Agreement with respect to: (i) the Transferred Property that are not Assumed and Assigned Obligations; and (ii) all other portions of the Project Site owned by Assignor.

3. **Assumption of Development Agreement.** Assignee hereby assumes, effective as of Assignor's conveyance of the Transferred Property to Assignee, all of the Assigned and Assumed Obligations with respect to the Transferred Property and agrees to observe and fully perform, and to be subject to, all of the Assumed and Assigned Obligations. The parties intend that, upon the execution of this Assignment and conveyance of the Transferred Property to Assignee, Assignee shall become the "Owner" under the Development Agreement with respect to the Transferred Property and the Assigned and Assumed Obligations.

4. **Reaffirmation of Indemnifications.** Assignee hereby consents to and expressly reaffirms any and all indemnifications of the City set forth in the Development Agreement, including, without limitation, Section ___ of the Development Agreement.

5. **Binding on Successors.** All of the covenants, terms, and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

6. **Notices.** The notice address for Assignee under Section ____ of the Development Agreement shall be:

_____
_____
_____
Attn: _____

With copy to:

_____
_____
_____
Attn: _____

7. **Counterparts.** This Assignment may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument.

8. **Governing Law.** This Assignment and the legal relations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

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IN WITNESS HEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

ASSIGNOR:
[insert signature block]

ASSIGNEE:
[insert signature block]