

ORDINANCE NO.

AN ORDINANCE AMENDING A DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF MOUNTAIN VIEW AND EMBP 455, L.L.C., FOR THE
PROPERTY AT 575 EAST MIDDLEFIELD ROAD

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

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

1. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 to 65869.5, authorizing municipalities to enter into development agreements in connection with the development of real property within their jurisdiction by qualified applicants with a requisite legal or equitable interest in the real property which is the subject of such development agreement.

2. The purpose of Government Code Sections 65864 to 65869.5 is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations. As authorized by Government Code Section 65865(c), City Code Sections 36.54.15 and 36.54.40 contain requirements for the adoption, amendment, and cancellation of development agreements within the City.

3. Verisign, through its entity EMBP 455, L.L.C. ("EMBP"), was the original developer for the project site located at 575 East Middlefield Road in the City ("Project Site"). The City adopted Ordinance No. 7.10 on February 23, 2010, which approved a Development Agreement subsequently executed by the parties on April 8, 2010, for the development of a Transit-Oriented Development Permit Office Project, Heritage Tree Removal Permit, and a Preliminary Parcel Map for a 102,419 square foot office building and the installation of a Class I bicycle trail through the Project Site ("Development Agreement").

4. Subsequently, Symantec purchased Verisign and retained the entity EMBP, the original signatory of the Development Agreement.

5. On February 9, 2015, Symantec filed a written request with the City to amend the Development Agreement to provide for one additional year to install the Class I bicycle trail improvements required by the Development Agreement.

6. On March 11, 2015, the Zoning Administrator held a public hearing pursuant to City Code Section 36.54.15, and at the conclusion of the hearing recommended to the City

Council that the Development Agreement be amended. The Zoning Administrator's recommendation included a statement that the proposed amendment has been reviewed by the City Attorney, and made the required findings for the amendment as set forth in City Code Section 36.54.15(a)(1-7).

7. On March 31, 2015, the City Council considered Symantec's written request to amend the Development Agreement and required additional conditions of approval, including: the dedication of an easement for the Class I bike trail by July 10, 2015; submittal of a fully executed bond for the cost of the Class I bike trail improvements by July 10, 2015; and a requirement that Symantec join the Mountain View Transportation Management Association (TMA) by July 10, 2015, and participate in the TMA by December 7, 2015.

8. On May 19, 2015, the Council approved Symantec's written request and added the following amended language to the Development Agreement: Owner shall convey an emergency vehicle access easement (EVAE) to the EFL property through Owner's parcel by December 7, 2015.

9. City Code Section 36.54.40 provides that the procedure for amending a Development Agreement is the same as for the entering into a Development Agreement.

Section 2. The City Council finds that amending the Development Agreement is necessary, and further makes the required findings as set forth in City Code Section 36.54.15(a)(1-7) for the amendment of a Development Agreement as follows, that the amendment:

1. Is consistent with the objectives, policies, general land uses, and programs specified in the General Plan because the project conforms to the allowable uses and policies of the High-Intensity Office General Plan Land Use Designation and conforms to the floor area ratio, setbacks, height, landscaping, lot coverage, allowable uses, and other development standards of the ML-T Zoning District;

2. 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 conforms to the floor area ratio, setbacks, height, landscaping, lot coverage, allowable uses, and other development standards of the ML-T Zoning District;

3. Is in conformity with public convenience, general welfare, and good land use practice because the proposed office project and Development Agreement conform to the development standards of the ML-T Zoning District and are compatible with surrounding development;

4. Will not be detrimental to the health, safety, and general welfare of the community because an Initial Study and Mitigated Negative Declaration were previously adopted for the project that proposed mitigations that would reduce impacts to a less-than-significant level;

5. Will not adversely affect the orderly development of property or the preservation of property values because the project is consistent with the development standards of the ML-T Zoning District and the layout and design are compatible with surrounding development;

6. Is needed by the applicant due to the complexity, cost, or infrastructure requirements for development because the applicant needs additional time to install a Class I bike trail; and

7. Is advantageous to and benefits the City because the project will provide a publically accessible Class I bike trail through the site.

Section 3. The City Council hereby amends Ordinance No. 7.10 as provided for herein, and amends the Development Agreement as provided in Attachment A hereto.

Section 4. The provisions of this ordinance shall be effective thirty (30) days from and after the date of its adoption.

Section 5. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 6. 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.

SP/7/ORD
804-05-19-15o-E

OFFICIAL BUSINESS
Document entitled to free recording
Government Code Section 6103

RECORDING REQUESTED BY AND
PLEASE RETURN TO:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF MOUNTAIN VIEW
AND EMBP 455, L.L.C., A CALIFORNIA LIMITED LIABILITY COMPANY,
FOR TRANSIT-ORIENTED DEVELOPMENT**

575 MIDDLEFIELD ROAD

THIS FIRST AMENDMENT to the Development Agreement by and between the City of Mountain View and EMBP 455, L.L.C., a California limited liability company, for Transit-Oriented Development 575 Middlefield Road, is dated for identification this ____ day of _____ 2015 and is made by and between the City of Mountain View, a California Charter City and municipal corporation, whose address is P.O. Box 7540, Mountain View, California, 94039-7540 ("City"), and EMBP 455, L.L.C., a California limited liability company ("Owner").

RECITALS

A. On April 8, 2010, City and Owner entered into a Development Agreement pursuant to Government Code Section 65864, *et seq.*, and City Code Section 36.54, *et seq.*, for purposes of facilitating a Transit-Oriented Development project located at 575 East Middlefield Road ("Development Agreement") in connection with the development of a new 102,419 square foot, four-story building and associated site improvements. The Development Agreement was recorded as Document No. 207857710 on July 7, 2010 with the Santa Clara County Recorder's Office.

B. On February 9, 2015, Owner requested an amendment to the Development Agreement for an extension of time of one (1) additional year to complete the Class 1 Bike Trail improvements which were required of the developer by the Development Agreement.

C. City and Owner desire to amend the Development Agreement to reflect said modifications.

NOW, THEREFORE, in consideration of the recitals and mutual promises of the parties contained herein, City and Owner agree to the below-referenced amendments to the Development Agreement as follows:

Section 5.2 shall be amended to read as follows:

“5.2 **Term.** The Term of this Agreement shall commence on the Effective Date, thirty (30) days after enactment of this Agreement, and shall automatically expire six (6) years after the Effective Date.

a. Notwithstanding the foregoing, the Term shall be automatically extended to eight (8) years after the Effective Date if each of the following occurs: (1) Owner or its successors have dedicated an easement by parcel map or by separate instrument for the Class I bike trail by July 10, 2015; (2) Owner or its successors submit a fully executed bond for the cost of the Class I bike trail improvements by July 10, 2015; (3) Owner or its successors have improvement plans approved by the Public Works Director and enter into an improvement agreement with City to assure installation of these trail improvements by September 1, 2015; (4) the trail is installed and accepted by City before the sixth anniversary of the Effective Date hereof; (5) Owner or its successors join the Mountain View Transportation Management Association (TMA) by July 10, 2015; (6) Owner or its successors enter into a service agreement with the TMA and commence operation of a shuttle service connecting the site to the Downtown Mountain View Caltrain Station during morning and evening commute hours or during a schedule that is deemed appropriate by the TMA by December 7, 2015 and participate in the TMA for the term of this Agreement; and (7) Owner shall convey an emergency vehicle access easement (EVAE) to the EFL property through Owner’s parcel by December 7, 2015.

b. City agrees not to unreasonably withhold or delay any review or acceptance required or specified under this Paragraph 5.2.

Such completion deadline shall be subject to those delays outside the control of Owner that are generally considered to be “force majeure” events under construction contracts, such as “Acts of God,” including, but not limited to, fire, storm, flood, landslide, earth movement, subsidence or earthquake, or other matters that are beyond the reasonable control of a party, such as unusual labor shortages, labor disputes, unusual unavailability of materials, war, political unrest, prolonged transportation delays or other causes beyond a Party’s control that directly and immediately affect the

subject work, whereupon the sixth anniversary date for completion of construction shall be extended day by day for the delays caused by such force majeure events.

The Class I bike trail shall be constructed within the 14' wide trail easement (10' wide path with two 2' wide shoulders) and located along the eastern edge of the Property between the adjacent EFL property (sometimes referenced as the "Sares Regis Parcel") at the south property line and near East Middlefield Road at the north property line as shown on the preliminary parcel map for the project. The trail shall be constructed per Caltrans requirements for a Class I bike trail."

All other terms and conditions in the Development Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment, dated _____, 2015 for identification to the Development Agreement is executed by City and Owner.

"City":
City of Mountain View,
a California Charter City and municipal
corporation

"Owner":
EMBP 455, L.L.C.,
a California limited liability company

By: _____
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

City Attorney