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P.O. Box 7540
Mountain View, CA 94039-7540

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**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 ~~dated April 8, 2010~~ 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 ~~five (5)~~ 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 ~~the fourth anniversary of the Effective Date of this agreement September 1, 2015; and~~ (4) the trail is installed and accepted by City before the ~~fifth~~ sixth anniversary of the Effective Date hereof; (5) Owner or its successors join the Mountain View Transportation Management Association (TMA) by July 10, 2015; and (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.

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 ~~fifth-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