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AND WHEN RECORDED RETURN TO:

CITY OF MOUNTAIN VIEW
500 Castro Street
Mountain View, CA 94041
ATTN: CITY MANAGER

APN: 160-530-004

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DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF MOUNTAIN VIEW,
a California Charter City and municipal corporation

AND

WTA MIDDLEFIELD LLC,
a California limited liability corporation

(490 East Middlefield Road)

Adopted by Ordinance No. _____

Effective Date: _____, **2026**

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LIST OF EXHIBITS:

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT ("**Development Agreement**") dated for reference purposes as of _____, 2026 ("**Agreement Date**"), is entered into by and between WTA MIDDLEFIELD LLC, a California limited liability company ("**Developer**"), and the CITY OF MOUNTAIN VIEW, a charter city and municipal corporation organized and existing under the laws of the State of California ("**City**"). Developer and City are sometimes referred to individually herein as a "**Party**" and collectively as "**Parties**."

RECITALS

This Development Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties, and the following recitals are a substantive part of this Development Agreement and incorporated herein; terms are defined throughout this Development Agreement as indicated in **bold** language.

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risks of development, the Legislature of the State of California enacted Government Code Section 65864 *et seq*. ("**Development Agreement Law**"), which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement establishing certain development rights and obligations pertaining to real property.

B. Pursuant to Government Code Section 65865, the 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. Developer currently has a legal and/or equitable interest in approximately 2.86 acres of that certain real property commonly known as 490 East Middlefield Road, Mountain View, California, (Assessor's Parcel Number 160-53-004), depicted on Exhibit A and more particularly described in the legal description provided in Exhibit B ("**Property**").

D. The Property is located within the East Whisman Mixed Use Land Designation under the City's 2030 General Plan (the "**General Plan**"), which was adopted on July 10, 2012, by City Council Resolution No. 17710, and is located in an area subject to the P(41) East Whisman Precise Plan (the "**EWPP**"), which was adopted on November 5, 2019, by City Council Resolution No. 18397, with subsequent amendments adopted thereto on October 13, 2020 (City Council Resolution No. 18508), November 9, 2021 (City Council Resolution No. 18616), and November 12, 2024 (City Council Resolution No. 18948). Under the General Plan, the Property is designated "Mixed Use Character Area" and, under the EWPP, the Property is designated a "High Intensity" subarea within the "Mixed Use Character Area," which allows for development at a Floor Area Ratio ("**FAR**") of up to 1.0 for projects with measures for highly sustainable development consistent with the City's Zoning Ordinance or EWPP standards. Projects within the EWPP area may earn a "**Bonus FAR**" (as described in Recital F.1 below) up to 3.5 FAR by including green building standards, providing affordable housing, and contributing a Community Benefit Fee.

E. On December 23, 2024, Developer submitted a preliminary application under Senate Bill 330 (Government Code Section 65941.1) with a proposal to develop the Property by demolishing an existing two-story commercial building and constructing an eight-story mixed-use development, with 460 residential rental units and approximately 9,371 square feet of ground floor commercial space, with associated infrastructure and landscape improvements including the removal of twenty-nine (29) Heritage trees (collectively referred to as the "**Project**").

F. Prior to entering into this Development Agreement, the Parties disagreed on the interpretation of certain Applicable City Regulations (as defined in Article 4, Section 4.1(A) below) as applied to the Project. In recognition of this dispute, and without waiving its right to interpret its Applicable City Regulations, the City agrees for purposes of this Development Agreement that the Developer is entitled to a floor area ratio ("**FAR**") and density bonus benefits, as specified below:

1. Residential Bonus FAR and Density Bonus Concession/Waivers. Under the EWPP, the Developer may seek a Bonus FAR on this Project by meeting certain requirements, including achieving a satisfactory rating on the City's Green Building rating system, providing a monetary community benefits contribution, and by providing at least fifteen percent (15%) affordable units. (See EWPP Section 6.1.5 "Residential Bonus FAR Standards"). Here, Developer has agreed to: (i) design and construct the Project to at least a Silver rating under the Leadership in Energy and Environmental Design ("**LEED**") standards (LEED certification is not required); (ii) construct the residential units to be all-electric; and (iii) to make a voluntary monetary contribution in the amount of One Million, One Hundred Thousand Dollars ($1,100,000) ("**EWPP Community Benefit Fee**"). Developer has also agreed to deed restrict in perpetuity fifty-five (55) of the residential units at the Project as Below Market Rate ("**BMR**") units, at a blended rate of sixty-five percent (65%) Area Median Income ("**AMI**"), which represents fifteen (15%) of the 361 base unit count. Accordingly, for purposes of this Development Agreement, the Parties have agreed the Project is eligible to a bonus floor area ratio of 2.41 ("**Bonus FAR**") under the EWPP, and that Developer is eligible under Government Code section 65915 ("**SDBL**") for the following density bonuses for the Project:

a. An increase of 99 units at the Project for a total of 460 residential units at the Project.

b. One concession and unlimited waivers of the City's development standards (subject to the limitations as permitted by state law) in connection with the Project and as identified in the Project Approvals, described in Recital G below.

G. Prior to or concurrently with the approval of this Development Agreement, City has taken numerous actions in connection with the development of the Project on the Property and has determined that the Project complies with the plans and policies set forth in the General Plan, the EWPP, and the Housing Element. The Project plans, approvals, and determinations described in this Recital are collectively referred to herein as the "**Project Approvals**." These Project Approvals include:

1. California Environmental Quality Act ("**CEQA**") Findings: On _____, 2026, and as set forth in City Resolution No. _____, following review

and recommendation by the Environmental Planning Commission ("**EPC"**), the City Council approved an AB 130 (Public Resources Code Section 21080.66) consistency analysis and determined that the Project met the criteria as a statutorily exempt housing project under Public Resources Code Section 21080.66. A Notice of Exemption was submitted and filed with the California State Clearinghouse on _____ (Project No. _____) in accordance with Cal. Code Regs., Title 14, Section 15062, and that no legal challenges to the Project's CEQA exemption determination have been timely made or filed.

2. City Commission Review. On September 3, 2025, the Project's design was reviewed at a Design Review Consultation (DRC) meeting, in which City staff, the public, and the Developer provided feedback on the design. Thereafter, on January 21, 2026, the Project was reviewed by the EPC, which recommended approval of the Project with modified conditions of approval. On February __, 2026, at a public hearing, the Zoning Administrator recommended that _____.

3. Planned Community Permit. Following review and recommendation by the EPC, and after a duly noticed public hearing, the City Council, on _____, 2026, approved a Planned Community Permit pursuant to Section 36.50.55 of the City Code by Resolution No. _____.

4. Heritage Tree Removal Permit. Following review and recommendation by the EPC, and after a duly noticed public hearing, the City Council, on _____, 2026, approved a Heritage Tree Removal Permit, pursuant to Section 32.35 of the City Code by Resolution No. _____.

5. Development Review Permit. Following review and recommendation by the EPC, and after a duly noticed public hearing, the City Council, on _____, 2026, approved a Development Review Permit for the Project pursuant to Section 36.44.70 of the City Code by Resolution No. _____, which also includes findings that the Project qualifies for a density bonus under Section 36.48.95 of the City Code.

H. Subsequent Approvals. Consistent with the Project Approvals, the Parties anticipate that during the Term of this Development Agreement, as defined in Section 3.2 below, and subsequent to the Effective Date, as defined in Section 3.1 below, Developer shall seek from the City certain subsequent land use approvals, entitlements, and permits as will be necessary or desirable for implementation of the Project, collectively referred to as "**Subsequent Approvals**," and as more particularly described in Article 9 of this Development Agreement. When any Subsequent Approval applicable to the Property is approved by the City, then such Subsequent Approval shall become subject to all of the terms and conditions of this Development Agreement applicable to the Project Approvals and shall be treated as part of the Project Approvals, as defined in Recital G above.

I. Summary of Community Benefits. City has determined that by entering into this Development Agreement, City will further the purposes set forth in the Development Agreement Law by, among other things, providing a balanced stock of housing for a range of the City's residents and ensuring that the Project will provide substantial community public benefits,

(hereinafter referred to as "**Community Benefits**" and more particularly described in Article 2), as summarized below:

1. Financial Contributions: Developer voluntarily agrees to make the following financial contributions, subject to the terms and conditions in Article 2: (a) an EWPP Community Benefit Fee of One Million, One Hundred Thousand Dollars ($1,100,000), as set forth in Section 2.2(A) below; (b) a Recreational City Facilities Contribution of One Million, Two Hundred Thousand Dollars ($1,200,000), as set forth in Section 2.2(B) below; and (c) a Tenant Improvement Funds of One Million, Two Hundred Thousand Dollars ($1,200,000), as set forth in Section 2.2(C) below.

2. Affordable Housing. In addition to the fifty-five (55) affordable rental units ("**BMR Units**") designated by Developer's application for a density bonus and Bonus FAR under the EWPP to remain affordable in perpetuity, Developer also agrees to provide an additional five (5) BMR Units, comprised of three (3) studios restricted to households earning no more than 90% AMI and two (2) 1-bedroom units restricted to households earning no more than 100% AMI, as a Community Benefit, (hereinafter referred to as "**Community Benefit BMR Units**"). The affordability levels of the Community Benefit BMR Units shall remain deed restricted for a period of ten (10) years, unless the Parties enter into the Master Lease Guarantee, described below, in which case the affordability of the Community Benefit BMR Units shall be deed restricted for a period of fifteen (15) years.

3. Option for Master Lease Guarantee. In addition to the fifty-five (55) BMR Units and five (5) Community Benefit BMR Units described above, and subject to the conditions noted in Section 2.4 below, Developer shall provide the City an option to enter into a Master Lease or a Master Lease Guarantee (collectively, "**Master Lease Guarantee**") to designate up to (sixty) 60 additional units as City rent guaranteed units, for a minimum period of seven (7) years.

4. LEED Silver Green Building Requirements. Developer agrees to design and construct the Project using Leadership in Energy and Environmental Design ("**LEED**"), to at least a Silver rating (LEED certification shall not be required), to satisfy the EWPP's Green Point rating requirement, as set forth in Section 2.5 below. In addition, the Parties agree that Developer shall construct the Project to be all-electric, which means that the residential units shall not include natural gas or propane plumbing, heating, cooking, or clothes drying appliances ("**All-Electric**"), as set forth in Section 2.6 below.

5. Bicycle Parking. Developer agrees to provide three hundred, fifty-eight (358) bicycle parking spaces, at the Project, as set forth in Section 2.7 below.

6. Open Space. Developer agrees to provide approximately thirty-three thousand (33,000) square feet of open space at the Project, for the use of the residents, occupants or visitors of the Project, as set forth in Section 2.8 below.

7. Other Public Improvements and Offerings, including a Paseo Easement. Developer shall also provide a public easement for a paseo walkway on the westerly boundary of the residential building, as designated in the Project Approvals and record a public access easement for such paseo walkway, as set forth in Section 2.9 below.

8. Sales Tax Point of Sale Designation. Developer shall use good faith efforts to the extent allowed by law to require all persons and entities providing materials for the construction of the Project, to take affirmative steps to have the local portion of the sales and use tax distributed directly to the City instead of through the County-wide pool, as set forth in Section 2.11 below.

J. 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 Project Approvals and to ensure that the Community Benefits are provided by Developer pursuant to the terms of this Development Agreement. The terms and conditions of this Development Agreement have undergone 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 and in conformance with the Development Agreement Law and the goals, policies, standards, and land use designations specified in City's General Plan and, further, the City Council finds that the economic interests of City's citizens and the public health, safety, and welfare will be best served by entering into this Development Agreement.

K. The Project will also serve to benefit the City, due to the following negotiated agreements:

- BMR and Density Bonus Agreement,
- Improvements Agreement (Public Works Department),
- Transportation Demand Management (TDM) Agreement
- Stormwater Management Maintenance Agreement,
- Storm Drain Hold Harmless Agreement,
- Sanitary Sewer Hold Harmless Agreement, and

L. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Development Agreement is appropriate. This Development Agreement will eliminate uncertainty regarding Project Approvals, thereby encouraging planning for, investment in, and commitment to use and development of the Property. Continued use and development of the Property will in turn provide substantial housing, employment, tax, and other public benefits to City.

M. On _____, 2026, the Zoning Administrator, the initial hearing body for purposes of development agreement review, considered this Development Agreement and made a recommendation for approval to the City Council.

N. On _____, 2026, the City Council adopted Ordinance No. _____ approving this Development Agreement (the "**Enacting Ordinance**"), which was introduced on _____, 2026, and adopted on _____, 2026, with an effective date of _____, 2026.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the receipt and adequacy of which consideration is acknowledged, Developer and the City agree as follows:

DEVELOPMENT AGREEMENT

ARTICLE 1. GENERAL PROVISIONS

Section 1.1 Property Subject to the Development Agreement. All of the Property shall be subject to this Development Agreement. The Parties hereby acknowledge that, as of the Effective Date, Developer has a legal and/or equitable interest in the Property. Developer further agrees that all persons holding legal or equitable title in the Property shall be bound by this Development Agreement.

ARTICLE 2. COMMUNITY BENEFITS

Section 2.1 Community Benefits Obligations. Developer shall perform and provide the specific Community Benefits described in the Project Approvals, Recital I, and in this Article 2, some of which may exceed the dedications, conditions, and exactions that City may impose under Applicable Law, but which the Parties expressly agree were negotiated at arm's length in consideration of the rights and benefits conferred by City to Developer under this Development Agreement.

Section 2.2 Financial Contributions. Developer voluntarily agrees to make the following contributions, as described below:

A. EWPP Community Benefit Fee. Developer agrees to provide to the City with a one-time financial contribution of One Million, One Hundred Thousand Dollars ($1,100,000). This EWPP Community Benefit Fee shall be paid to the City before the issuance of the final Certificate of Occupancy for the Project. For purposes of this Development Agreement, except where a specific certificate of occupancy is identified herein (e.g. first or final), a "**Certificate of Occupancy**" shall be defined as any certificate of occupancy issued by the City's Building Official, including a temporary certificate of occupancy, in connection with the Project, as set forth in Mountain View City Code Section 8.28.50.

B. Recreational City Facilities Contribution(s). As a measure to supplement the adjacent open space areas in the vicinity of the Project, separate from any obligation to pay impact fees or Quimby fees, Developer shall voluntarily contribute a Recreational City Facilities Contribution as described in this Section.

1. Developer shall pay to the City the amount of One Million, Two Hundred Thousand Dollars ($1,200,000) (hereinafter referred to as the "**Recreational City Facilities Contribution**") for the purposes of the acquisition and development of a new City Park. The Recreational City Facilities Contribution shall be paid in full upon the later of: (a) the issuance of the final Certificate of Occupancy for the Project; or (b) thirty (30) days after the start of construction of the new City Park, or in the alternative, thirty (30) days after the start of any enhancement measures undertaken at the existing Pyramid Park, as described in subsection 2(a) below; provided, however, that in no event shall payment of the full amount of the Recreational City Facilities Contribution be made later than five (5) years after issuance of the first building permit for the Project. The City shall maintain a separate accounting of deposits, commitments, and expenditures for the Recreational City Facilities Contribution and any Supplemental

Recreational City Facilities Contribution, as described below. Upon Developer's written request, the City shall provide a report summarizing the status of funds and park-related expenditures.

2. The Recreational City Facilities Contribution (and any Supplemental Recreational City Facilities Contribution made pursuant to Section 2.2 (C) (Tenant Improvements) below) shall be used by the City to acquire, improve, and/or develop a new public park no smaller than one-half (½) acre ("**City Park**"). The City Park shall be located within one thousand, two hundred fifty (1,250) linear feet of the Property's boundary (measured from the closest point of the Project site) ("**City Park Area**"). The City shall make good faith efforts to initiate acquisition or development activities promptly and shall expend or irrevocably commit the Recreational City Facilities Contribution for the City Park within one (1) year following the issuance of the Project's final Certificate of Occupancy. The Parties agree that the City retains sole discretion with respect to site selection, acquisition method, design, timing, and development of the City Park within the City Park Area.

a. Pyramid Park Enhancement Alternative. In the alternative, if the City does not expend or irrevocably commit the Recreational City Facilities Contribution to a new City Park within six months after the issuance of the final Certificate of Occupancy, the Recreational City Facilities Contribution shall be directed toward enhancement of Pyramid Park, an existing City park, located at 3930 Pyramid Way, Mountain View, California. Six Hundred Thousand Dollars ($600,000) of the Recreational City Facilities Contribution shall be used by the City (and any Supplemental Recreational City Facilities Contribution made pursuant to subsection (C) below), for the enhancement of Pyramid Park, including, but not limited to, playground surface replacement, basketball court surface replacement, and play/exercise structures replacement. In addition, Six Hundred Thousand Dollars ($600,000) of the Recreational City Facilities Contribution shall be used by the City towards enhancing access, wayfinding or monuments, landscaping, and lighting of the existing public trail between the Project and Pyramid Park.

C. Tenant Improvements. As a measure to encourage retail tenant occupancy at the Project, Developer agrees to provide hard-cost tenant improvements for the ground floor retail spaces in an amount equivalent to One Million, Two Hundred Thousand Dollars ($1,200,000) ("**TI Funds**").

1. TI Funds may only be used for Tenant Improvements. "**Tenant Improvements**" for purposes of this Development Agreement is defined to include permanent, affixed improvements to the retail spaces such as providing structural alterations and/or additions to the space; installing sufficient electrical, plumbing or HVAC systems; upgrading the retail space to attract more desirable retail tenants; or providing interior improvements, such as providing cabinetry, fixtures, lighting, painting, or flooring, *i.e.* creating a "warm shell" condition for the tenants. Tenant Improvements shall not include soft cost, furniture, equipment, operating subsidies, or tenant-move-in allowances unless otherwise approved in writing by the Community Development Director (or designee). To qualify for use of TI Funds, Tenant Improvements must: (a) be permanent, code-compliant improvements to the building shell or interior; (b) materially enhance the long-term marketability or functionality of the tenant space; and (c) be constructed pursuant to approved plans and building permits. Developer may not satisfy this obligation by claiming Tenant Improvements work that is already required under the Project Approvals or code-required improvements typically borne by landlord.

2. Prior to the expenditure of TI Funds, Developer shall submit to the City for review and approval: (a) a detailed scope of proposed Tenant Improvements work; (b) a line-item budget identifying hard costs; and (c) a schedule for completion (collectively referred to as "**Tenant Improvements Proposal**"). The City shall approve, conditionally approve, or disapprove such Tenant Improvements Proposal within fifteen (15) business days. If the City does not respond to the Tenant Improvements Proposal within fifteen (15) business days, Developer can provide the City with written notice of the failure to meet the deadline; if the City does not approve, conditionally approve, or disapprove the Tenant Improvement Proposal within five (5) business days of the notice, the Tenant Improvements Proposal is deemed approved. Approval shall not be unreasonably withheld but may be conditioned to ensure compliance with this Development Agreement. The City's approval or consideration of the Tenant Improvements Proposal shall not affect or be binding on the City Building Official in his or her review of any application for related building permits at the Project.

3. Developer shall maintain records of the following for at least two (2) years following the expenditure of any TI Funds: (a) contractor invoices and lien releases; (b) evidence of payment by the Developer such as copies of receipts, invoices, or expenditures; (c) a certification by Developer's construction manager that the work was completed in accordance with approved plans; and (d) photographic documentation of the completed TI improvements. City shall have the right to inspect the TI work and review Developer's TI Fund expenditures during this two (2) year period.

4. Developer must expend the TI Funds on eligible Tenant Improvements no later than the issuance of the final Certificate of Occupancy for the ground-floor commercial or retail space, unless extended by mutual written agreement ("**TI Fund Deadline**").

5. In the event that Developer does not expend the full One Million, Two Hundred Thousand Dollars ($1,200,000) in Tenant Improvements Funds on eligible Tenant Improvements to the ground floor commercial or retail spaces at the Project, Developer shall contribute the unexpended balance amount, or the difference between One Million, Two Hundred Thousand Dollars ($1,200,000) and the amount actually expended in approved Tenant Improvements, to the City as an additional Recreational City Facilities Contribution to the Recreational City Facilities Contribution described in subsection (B) above ("**Supplemental Recreational City Facilities Contribution**"). This Supplemental Recreational City Facilities Contribution shall be paid to the City no later than thirty (30) calendar days after the TI Fund Deadline.

Section 2.3 Affordable Housing. The City by its General Plan and under state law, is committed to increasing its supply of affordable housing and has adopted an affordable housing program ordinance, set forth in City of Mountain View Municipal Code Section 36.40 *et seq*., with the latest amendments adopted in City Ordinance No. 12.19, adopted on June 15, 2019. The City also requires an associated affordable housing impact fee ("**AHP Ordinance**") and as implemented in the City's Administrative Guidelines for its Below-Market-Rate Housing Program, adopted on January 26, 1999 and most recently revised on April 24, 2025 ("**BMR Program Guidelines**"). The Parties recognize that the creation of the proposed new market-rate housing Project will bring new households to the community who will expend money locally on goods and services. To meet this demand, new jobs will be created, a share of which are low

paying, bringing with it new lower-income households and new demand for affordable units. The Developer has agreed to commit, via execution and recordation on title to the Property of a deed restriction in a form acceptable to the City Attorney, fifty-five (55) rental BMR Units, at a blended rate of 65% Area Median Income ("**AMI**") at the Property, in a manner consistent with the City's AHP Ordinance requirements and BMR Program Guidelines. Developer further agrees to provide, as a Community Benefit under this Development Agreement, Community Benefit BMR Units, which will be comprised of three (3) studios restricted to households earning no more than 90% AMI and two (2) 1-bedroom units restricted to households earning no more than 100% AMI, and also subject to the City's AHP Ordinance and BMR Program Guidelines, for a total of sixty (60) BMR Units provided at the Project.

A. Affordability Housing Agreement. Developer agrees to enter into an Affordable Housing Agreement with the City, in a form substantially similar to the template Affordable Housing Agreement and approved by the City Attorney, attached as Exhibit D, to be recorded with the County of Santa Clara Recorder's Office prior to the issuance of any building permit for the housing development. The Affordable Housing Agreement shall include terms that designate that the affordability of the fifty-five (55) BMR Units shall remain in place in perpetuity. The affordability of the five (5) additional BMR Units shall only be required to remain in place for ten (10) years, unless the City enters into the Master Lease Guarantee, in which case the affordability of the five (5) additional BMR Units shall remain in place for fifteen (15) years. In addition, pursuant to the City's AHP Ordinance and BMR Program Guidelines, the fifty five (55) BMR Units are to be reasonably dispersed throughout the residential portion of the Project, and have a distribution of units by number of bedrooms proportionate to the market-rate units, and be of comparable size based on net habitable square footage of the units. A good faith effort shall be made to reasonably disperse the five (5) additional BMR Units throughout the residential portion of the Project, provided, however that the final location of the five (5) additional BMR Units shall be at the sole discretion of Developer. To the extent BMR Units, including the five (5) additional units, are located as shown on the approved plans, they shall be deemed to satisfy this requirement. The exterior design of the BMR units shall be consistent with the market-rate units and shall be comparable in terms of interior design, appearance, materials, and quality of finish. However, the BMR units may differ from market-rate units in the project by using lower-cost alternatives to certain amenities considered to be luxury items. For example, more expensive plumbing and lighting fixtures, hardwood floors, and marble entries may be considered luxury items, and less-expensive materials may be substituted. BMR units shall have access to all project amenities and recreational facilities available to market-rate units.

Section 2.4. City's Option to enter a Master Lease Guarantee for Additional Units. In recognition of the Parties' goal to support housing development and availability at a variety of income levels at the Project, the Parties have agreed to explore an option for the City to enter into a Master Lease Guarantee with the Developer in the future, subject to the provisions below.

A. Grant of Option. Developer hereby grants to the City an exclusive and irrevocable option ("**Option**") to enter into a Master Lease Guarantee with Developer, as set forth in Exhibit E, for a portion of the completed residential units within the Project, under which the City (or its designee) will guarantee the rent for no less than sixty (60) additional units ("**City Rent Guaranteed Units**"). This guarantee will allow the City to decide the affordability level (i.e., percentage of AMI) of the City Rent Guaranteed Units by subsidizing the rent and related charges

(e.g., parking) of the City Rent Guaranteed Units. The guarantee will also ensure Developer receives 90% AMI for the studio-sized units. The Parties will negotiate in good faith to determine the amount for rent and related charges for the balance of the City Rent Guaranteed Units.

B. Exercise of Option.

1. Exercise Period. Developer will send a written notification to the Community Development Director when the Project is one (1) year from initiating construction. Thereafter, from the date of this written notification, the City will have three (3) months in which to exercise the Option ("**Option Term**").

2. Method of Exercise. To exercise the Option, the City shall deliver to Developer an executed counterpart of the Master Lease Option Agreement substantially in the form attached hereto as **Exhibit E**, together with written notice of its election to exercise the Option.

3. Developer Cooperation. Upon the City's timely exercise of the Option, Developer shall promptly execute Exhibit E and shall take all actions reasonably necessary to negotiate terms for and ultimately finalize and execute the Master Lease Guarantee, including providing draft lease exhibits, pro forma rent schedules, and required operating information.

4. Material Terms of Master Lease Guarantee. If the City timely exercises the Option, the Parties shall negotiate in good faith and execute a Master Lease Guarantee in a form approved by the City Manager in consultation with the City Attorney, which shall address at least the following material issues: (a) a Master Lease Guarantee of no less than sixty (60) units; (b) term of lease, which shall be no less than seven (7) years; (c) a schedule to release the City Rent Guaranteed Units from the Master Lease Guarantee; (d) ratio of studios, one bedroom, and two bedroom units to track composition of project as a whole, with the studio units to be guaranteed at 90% AMI; (e) Developer's potential responsibilities for all aspects of administration and management of units including, without limitation, all landlord-tenant issues; (f) method of income guarantee by City; (g) rights of City to designate occupants; and (h) rights of City to determine rents, which will be credited against revenue guarantee by City.

5. Recording. Developer shall execute and cause to be recorded, at Developer's sole cost, all relevant affordability restrictions, if any, for the City Rent Guaranteed Units. Developer shall complete such recordation within thirty (30) days after City execution of the Master Lease Guarantee.

6. No Limitation on City's Regulatory Authority. Nothing in this Section shall be interpreted to limit the City's independent regulatory authority or its ability to adopt or amend affordable-housing requirements, nor shall the Master Lease Guarantee be construed as granting Developer the right to reduce or offset any other affordable-housing obligations.

7. No Independent Obligation to Construct. This Option and the Master Lease Guarantee shall be exercisable only with respect to units that are actually constructed as part of the Project. The existence of the Option or Master Lease Guarantee does not require

Developer to construct any units or to proceed with development of the Project.

Section 2.5 LEED Silver Green Building Requirements. Developer agrees to design, construct, and complete the Project in accordance with the requirements of the LEED rating system, and shall qualify, if the Project were formally reviewed, to a minimum performance level of LEED Silver (certification shall not be required). Qualification to LEED Silver shall constitute satisfaction of the EWPP's Green Point rating requirement. Developer shall provide City with a LEED scorecard(s) at schematic design, design development, and 90% construction documents; and successfully pass inspection of all construction elements required to achieve LEED Silver prior to the City's issuance of the final Certificate of Occupancy. Failure of Developer to construct the project to the standard for LEED Silver shall constitute a Developer Default, as defined herein, unless Developer demonstrates, to the satisfaction of the City Building Official, that the failure was due to circumstances beyond Developer's reasonable control and City agrees to alternative measures of equal environmental value. Developer intends to include with its permit drawings a LEED scorecard for LEED Silver standards. The Parties agree that so long as Developer constructs the Project as shown in the approved drawings, the requirement to build to LEED Silver standards is satisfied.

Section 2.6 All-Electric Residential Construction. The Parties agree that Developer shall construct all residential units within the Project to be all-electric, which means that: (a) the residential units and their associated private outdoor space shall not include any natural gas or propane piping, service connection, manifold, meter stub, sleeve, conduit, or other infrastructure capable of delivering natural gas or propane, and (b) all plumbing, heating, cooling, water heating, cooking, or clothes drying appliances shall utilize electric energy sources ("**All-Electric**"). This requirement shall not extend to backup generators.

A. Notwithstanding the foregoing, and subject to availability or approval by the relevant utility provider, Developer may install natural gas or propane gas infrastructure only for the following limited and specifically permitted uses, and only in the non-residential areas of the Project: (a) for the use of a source of energy for gas-fueled fire pits or similar outdoor decorative fixtures located in publicly accessible or shared-amenity areas; (b) gas or propane service may be installed to accommodate commercial cooking appliances in the ground floor commercial or retail spaces, subject to separate metering and compliance with applicable health and safety and building code requirements; and (c) natural gas or propane service may be installed solely for heating the public-use pool and spa facilities, provided such systems are separately metered and do not interconnect with residential spaces. Developer shall submit, for City review and approval, a gas infrastructure plan showing all proposed non-residential gas lines, meters, shut-offs, and mechanical systems, demonstrating full compliance with the limitations above.

B. Developer shall submit to City, as part of its building permit and final inspection approvals: (a) all-electric compliance certifications, if any are required by the California Building Code; (b) mechanical, electrical, and plumbing diagrams demonstrating absence of gas infrastructure in residential areas; and (c) the gas infrastructure plan for commercial and amenity areas. City shall have the right to conduct field inspections to verify compliance with all-electric requirements and natural-gas limitations. Developer shall cure any deficiencies at its sole cost. No Certificate of Occupancy shall be issued for the residential portion of the Project unless and until the City has confirmed compliance with the all-electric construction requirements of this Section.

If Developer fails to comply with any requirement of this Section: (a) such failure shall constitute a material breach of this Agreement; (b) City may withhold building permits or Certificates of Occupancy until Developer achieves compliance; and (c) City may require Developer to implement alternative decarbonization or energy efficiency measures of equivalent or greater environmental benefit, at Developer's sole cost.

Section 2.7 Bicycle Parking. Developer agrees to provide three hundred, fifty-eight (358) bicycle parking spaces, consisting of three hundred and four spaces (304) spaces designated as long-term bicycle parking provided on-site in a secure room located within the residential garage, and fifty-four (54) short-term bicycle spaces (for both residential and commercial customers) provided in visible locations near the building entries, subject to the design standards and locations noted in the Project Approvals.

Section 2.8 Open Space. Developer agrees to design, engineer, construct, install, and maintain at its sole cost and expense not less than thirty-three thousand (33,000) square feet of open space at the Project, for use by the residents, occupants, or visitors of the residential units in the Project. This open space shall include a large second-floor podium courtyard, upper-level roof decks, landscaped areas, an outdoor pool, courtyard area and a small dog park ("**Open Space**"), as designated in the Project Approvals. The Open Space shall include all improvements, landscaping, structural elements, furnishings, lighting, wayfinding, pedestrian amenities, accessibility features, drainage, stormwater systems, utilities, public art (if applicable), and any other features identified in the approved plans (collectively referred to as "**Open Space Improvements**").

Section 2.9 Other Offered Public Improvements and Obligations.

A. Paseo Easement. Developer shall also provide a public easement for a paseo walkway ("**Paseo Easement**") on the westerly boundary of the residential building, as designated in the Project Approvals. The Paseo Easement shall include all improvements, landscaping, structural elements, furnishings, lighting, wayfinding, pedestrian amenities, accessibility features, drainage, stormwater systems, utilities, public art (if applicable), and any other features identified in the approved plans (collectively referred to as "**Paseo Easement Improvements**").

1. The Paseo Easement shall be privately-owned and publicly accessible space, which Developer shall own and maintain at its sole and exclusive expense in perpetuity. Developer shall execute and cause to be recorded against the Property in the Official Records a public access easement for the Paseo Easement ("**Paseo Easement**"), both in a form approved by the City Attorney granting the City and the general public perpetual, non-exclusive right to use, access, and enjoy the Paseo Easement. Said easements shall be executed by the Parties and recorded against the Property prior to the issuance of the first building permits for the Project.

2. The Paseo Easement shall: (a) run with the land and bind all successors and assigns; (b) provide public access 24 hours per day, seven days per week, other than temporary closures for maintenance or emergency purposes, unless the City approves limited hours for safety or operational reasons; (c) prohibit Developer from imposing fees, reservations, or entry restrictions except as expressly authorized in writing by the City; (d) identify the precise legal description and exhibit maps of the easement area; and (e) reserve to the City inspection and

enforcement rights necessary to ensure compliance with this Agreement. Developer shall not construct or allow any improvements, uses, or encumbrances within the Paseo Easement that would impair, restrict, or diminish public access rights without prior written approval of the City.

3. Developer shall construct and install all Paseo Easement Improvements as indicated in the Project Approvals prior to issuance of the first Certificate of Occupancy for any residential building within the Project, unless the City approves phased delivery in writing. City shall have the right to inspect the Paseo Easement improvements during construction and upon completion. Developer shall correct any deficiencies identified by the City at Developer's sole cost.

4. The Paseo Easement shall remain privately owned by Developer (or its successor) and shall be maintained, repaired, and replaced in perpetuity by Developer at Developer's sole and exclusive expense, including but not limited to: landscaping and irrigation, lighting and electrical systems, pedestrian furnishings and amenities, hardscape and pavement, drainage and stormwater infrastructure, accessibility features, and security, trash removal, graffiti abatement, and regular upkeep.

5. Developer shall not reduce the size of the Paseo Easement area, materially alter its design or functionality, temporarily close it except for maintenance and emergency purposes, or convert it to private use without the prior written approval of the City, which City may grant, condition, or withhold in its sole discretion. City shall have the right, with or without notice, to enter the Paseo Easement to verify compliance with the easement terms, maintenance obligations and operational requirements. Developer (or it's successor's) failure to construct or maintain the Paseo Easement consistent with this Agreement shall constitute a material breach hereof, permitting the City to exercise remedies which include, but are not limited to: (a) requiring Developer to perform corrective work, (b) performing maintenance or corrective work itself and recovering all costs from Developer; and/or (c) pursing any remedies available at law or equity. Nothing in this Section shall obligate the City to maintain the Paseo Easement, assume liability for its operation, or provide insurance, security or public services beyond those provided generally within the City. Developer (and successor) shall indemnify, defend and hold harmless the City from and against claims arising from Developer's ownership, construction, or maintenance of the Paseo Easement, consistent with the indemnity provisions in this Agreement.

Section 2.10. Other Governmental Permits. Developer shall apply in a timely manner for such other permits, approvals, grants, agreements, and other entitlements ("**Entitlements**") as may be required from other agencies having jurisdiction over, or in connection with the development of, or provisions of services to, the Project. City shall cooperate with Developer relative to such Entitlements.

Section 2.11 Sales Tax Point of Sale Designation. Developer shall use good faith efforts to the extent allowed by law to require all persons and entities providing bulk lumber, concrete, structural steel and pre-fabricated building components, such as roof trusses, used in connection with the construction and development of, or incorporated into, the Project, to: (A) obtain a use tax direct payment permit; (B) elect to obtain a subcontractor permit for the job site of a contract valued at Five Million Dollars ($5,000,000) or more; or (C) otherwise designate the Property as the place of use of material used in the construction of the Project in order to have the local portion

of the sales and use tax distributed directly to the City instead of through the County-wide pool. Developer shall instruct each of its general or subcontractors to cooperate with the City to ensure the full local sales/use tax is allocated to City. To assist City in its efforts to ensure that the full amount of such local sales/use tax is allocated to the City of Mountain View, Developer shall provide City with an annual spreadsheet, or shall instruct their general or subcontractors to cooperate with the City in providing an annual spreadsheet, which shall include a list of all subcontractors with contracts in excess of the amount set forth above, a description of all applicable work, and the dollar value of such subcontracts. City may use said spreadsheet sheet to contact each subcontractor who may qualify for local allocation of use taxes to the City. Notwithstanding the foregoing, nothing in this Section 2.9 shall apply to tenants who perform their own tenant improvement work.

ARTICLE 3. EFFECTIVE DATE AND TERM

Section 3.1 Effective Date. This Development Agreement shall become effective thirty (30) days after the date that the Enacting Ordinance is adopted by the City Council (the "**Effective Date**"). Provided, however, that if a referendum petition receives sufficient signatures to qualify the Enacting Ordinance approving this Development Agreement for placement on the ballot at a general or special election, the Effective Date shall be the date upon which the election approving the ordinance is certified.

Section 3.2 Term. The Term has been established by the Parties as a reasonable estimate of the time required to carry out and develop the Project and provide the Community Benefits of the Project ("**Term**").

Section 3.3 Initial Term. The "**Initial Term**" of this Development Agreement shall commence on the Effective Date and shall end on the earlier: 1) four (4) years from the Effective Date ("**Expiration Date**"); or 2) the date of any termination of this Development Agreement in accordance with the provisions hereof.

Section 3.4. Extended Term. Subject to the terms and conditions in this Section 3.4, Developer shall have the right to an extension of the Initial Term not to exceed a cumulative term of eight (8) years (inclusive of the Initial Term), as provided in the extension options described below ("**Extended Term**"). In addition to satisfying the extension criteria provided for each extension option below, the Developer must also demonstrate to the City Manager's sole discretion, exercised in good faith and consistent with the purposes of this Agreement, that the Developer is in compliance with all material terms and conditions of this Development Agreement and the Project Approvals at the time that each extension request is made.

A. First Extension Term Option; Criteria. If the Developer is in compliance with all material terms of this Development Agreement and the Project Approvals at the time the request is made, the City Manager shall grant a two (2) year extension of the Initial Term ("**First Extension Term**") for a total term of six (6) years, if the Developer has made a payment of One Hundred Thousand Dollars ($100,000) to the City at the time of the First Extension Request.

B. Second Extension Term Option; Criteria. If the City Manager has granted a First Extension of the Term under Section 3.4.A and if the Developer is in compliance with all

material terms and conditions of this Development Agreement and the Project Approvals at the time the extension request is made, the City Manager shall grant an additional two (2) year extension to the Term, for a total term of eight (8) years ("**Second Extension Term**"), if the Developer has made a second payment of Two Hundred, Fifty Thousand Dollars ($250,000) to the City at the time of the Second Extension Term request, and can demonstrate to the City Manager's satisfaction that Developer has submitted a building permit application for the Project

C. The City Manager has the authority and discretion to determine if the Developer has satisfied the respective extension criteria and upon making a determination in the affirmative, shall grant the extension options offered under this Section 3.4.

Section 3.5 Extension Request Procedure. If the Developer desires to request any of the extension options under Section 3.4, the Developer must submit a request in writing to the City Manager requesting the extension at least ninety (90) days prior to the date that the Initial Term or Extended Term would expire ("**Extension Request**"). The Extension Request shall include documentation demonstrating that relevant extension criteria as set forth in Section 3.4 have been satisfied or will be satisfied prior to the date that the Initial or First Extension Term would otherwise expire. For the avoidance of doubt, the City shall refund the payment associated with an extension request if the City Manager does not grant the request.

Section 3.6. Force Majeure Delay. Subject to the limitations and notice requirements set forth below in Section 3.7, the Term of this Development Agreement and the time within which either Party shall be required to perform any act under this Development Agreement may also 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 Force Majeure, and as unforeseen at the time this Development Agreement was executed by the parties. For purposes of this Development Agreement, "**Force Majeure**" is defined as strikes, lock outs, and other similar 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; 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, including without limitation any extension authorized by Government Code Section 66463.5(d); or enemy action; civil disturbances; wars; terrorist acts; epidemic; pandemic; quarantine; fire; unavoidable casualties; unforeseen environmental conditions of the Property that trigger statutory obligations to cease construction (such as the discovery of a leaking underground storage tank); or mediation, arbitration, litigation, or other administrative or judicial proceeding involving the Project Approvals or this Development Agreement, including without limitation any extension authorized by Government Code Section 66463.5(e) (each a "**Force Majeure Delay**"). Developer's inability or failure to obtain financing shall not be deemed to be a cause outside the reasonable control of the Developer and shall not be the basis for a Force Majeure Delay or any other excused delay under the terms of this Development Agreement.

Section 3.7 Extension of Times of Performance for Force Majeure Delay. An extension of time for any Force Majeure Delay shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if Notice (as defined in Section

13.5) by the Party claiming such extension is sent to the other Party within sixty (60) days of the commencement of the cause and provided that the Party claiming a delay avails itself of any available remedies. 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 Development Agreement may also be extended in writing by the mutual agreement of the City Manager and Developer, provided that the same does not affect the Term of this Development Agreement.

Section 3.8 Effect of Termination. Upon the expiration of the Term, this Development Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions set forth in Section 11.7 ("**Surviving Provisions**") below.

Section 3.9 City Representations and Warranties. City represents and warrants to Developer that:

A. City is a 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 approvals have been obtained.

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

D. The foregoing representations and warranties are made as of the Development Agreement Date. During the Term of this Development Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3.3 not to be true, immediately give written Notice of such fact or condition to Developer.

Section 3.10 Developer Representations and Warranties. Developer represents and warrants to City that:

A. Developer is duly organized and validly existing under the laws of the State of California and is authorized to do business in California and has all necessary powers to own property interests and in all other respects enter into and perform the undertakings and obligations of Developer under this Development Agreement.

B. The execution and delivery of this Development Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary company action and all necessary member approvals have been obtained.

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

D. Developer has not: 1) made a general assignment for the benefit of creditors; 2) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Developer's creditors; 3) suffered the appointment of a receiver to take possession of all, or substantially all, of Developer's assets; 4) suffered the attachment or other judicial seizure of all, or substantially all, of Developer's assets; 5) admitted in writing its inability to pay its debts as they come due; or 6) made an offer of settlement, extension, or composition to its creditors generally.

E. The foregoing representations and warranties are made as of the Development Agreement Date. During the Term of this Development Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3.4 not to be true, immediately give written Notice of such fact or condition to City.

ARTICLE 4. DEVELOPMENT OF PROPERTY

Section 4.1 Definitions. For purposes of this Article and the Development Agreement, the following terms are defined as follows:A. Applicable City Regulations. "**Applicable City Regulations**" means:

1. The City's development standards for the Property, including the permitted uses and zoning classifications, maximum density, and/or total number of residential units, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the terms, conditions, restrictions, and requirements for subsequent discretionary actions, the provisions of public improvements and financing of public improvements, and other terms and conditions of development as set forth in the General Plan, Municipal Code and Zoning Ordinance, and other City rules, regulations, ordinances, and official policies applicable to the Project on the Effective Date;

2. All State and Federal laws and regulations applicable to the Property and the Project as enacted, adopted, and amended from time to time.

3. Any New City Laws that do not Conflict with the Project Approvals or this Development Agreement, provided that such New City Laws are uniformly applied on a Citywide basis to all substantially similar types of development projects and properties.

a. As used in this Development Agreement, "**New City Laws**" means and includes any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines, or other regulations, which are promulgated or adopted by City (including but not limited to any City Council, Board, Commission, officer or employee) or its or their electorate (through the power of initiative, referendum or otherwise) after the Effective Date.

b. For purposes of this section, the word "**Conflict**" means a modification to the Project Approvals or this Development Agreement that purport to: (i) limit the permitted uses of the Property, the density and intensity of use (including but not limited to floor area ratios of buildings), or the maximum height and size of proposed buildings; (ii) impose requirements for reservation or dedication of land for public purposes or requirements for

infrastructure, public improvements, or public utilities, other than as provided in the Project Approvals or this Development Agreement; (iii) impose conditions upon development of the Property other than as permitted by the Project Approvals, the Applicable City Regulations, Changes in the Law (as provided in Section 4.8), and this Development Agreement; (iv) limit the timing, phasing, or rate of development of the Property; (v) limit the location of building sites, grading, or other improvements on the Property in a manner that is inconsistent with or substantially more restrictive than the limitations included in the Project Approvals and this Development Agreement; (vi) limit or control the ability to obtain public utilities, services, or facilities (provided, however, nothing herein shall be deemed to exempt the Project or the Property from any water use rationing requirements that may be imposed on a City-wide basis from time to time in the future or be construed as a reservation of any existing sanitary sewer or potable water capacity); (vii) require the issuance of additional permits or discretionary approvals by City other than those required by Applicable City Regulations, the Project Approvals, and this Development Agreement; (viii) establish, enact, increase, or impose against the Project or the Property any special taxes or assessments other than those specifically permitted by this Development Agreement, including Section 5.2; (ix) apply to the Project any New City Laws that are not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites; (x) impose against the Project any condition or exaction, including and dedication, not specifically authorized by Applicable City Regulations, the Project Approvals, or this Development Agreement; or (xi) limit the processing or procuring of applications and approvals of Subsequent Approvals.

Section 4.2 Vested Rights of Developer. Developer shall have the vested right to develop the Property and the Project in accordance with and subject to the terms and conditions of this Development Agreement, the Project Approvals, and the Applicable City Regulations, which shall control the permitted uses, density and intensity of use of the Property, and the maximum height and size of buildings on the Property.

Section 4.3 Reservations of City Authority. Notwithstanding any other provision of this Development Agreement to the contrary, the following City regulations and provisions shall apply to the development of the Project:

A. Regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure then applicable in City at the time the development permit application is deemed complete;

B. Regulations governing construction standards and specifications, including City's building code (including any building codes related to "Bird-Safe" building requirements), plumbing code, mechanical code, electrical code, fire code, and grading code, and all other uniform construction codes then applicable in City at the time the permit application is deemed complete;

C. New City Laws applicable to the Property or Project at the time the permit application is deemed complete, which do not conflict with the Project Approvals, any other provision of this Development Agreement, or Developer's vested rights under Section 4.2;

D. New City Laws which may be in conflict with the Project Approvals or this Development Agreement, but which are necessary to protect persons or property from dangerous or hazardous conditions that create a threat to the public health or safety or create a physical risk.

Section 4.4 Regulation by Other Public Agencies. Developer acknowledges and agrees that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Development Agreement does not limit the authority of such other public agencies. Developer shall, at the time required by Developer in accordance with Developer's construction schedule, apply for all such other permits and approvals as may be lawfully required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. Developer shall also pay all lawfully required fees when due to such public agencies. Developer acknowledges that City does not control the amount of any such fees. City shall reasonably cooperate with Developer in Developer's effort to obtain such permits and approvals; provided, however, City shall have no obligation to incur any costs, without compensation or reimbursement by Developer, or to amend any policy, regulation, or ordinance of City in connection therewith.

Section 4.5 Life of Project Approvals. The term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Development Agreement or the term otherwise applicable to such Project Approvals.

Section 4.6 Initiatives. If any New City Laws are enacted or imposed by a citizen-sponsored initiative or referendum, which New City Laws would conflict with the Project Approvals or this Development Agreement or reduce the development rights or assurances provided by this Development Agreement, such New City Laws shall not apply to the Property or Project; provided, however, the Parties acknowledge that City's approval of this Development Agreement is a legislative action subject to referendum. Without limiting the generality of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, use permits, building permits, or other entitlements to use that are approved or to be approved, issued, or granted by City shall apply to the Property or Project. Developer agrees and understands that City does not have authority or jurisdiction over any other public agency's ability to grant governmental approvals or permits or to impose a moratorium or other limitation that may affect the Project. City shall reasonably cooperate with Developer and, at Developer's expense, shall undertake such actions as may be necessary to ensure that this Development Agreement remains in full force and effect. City, except to submit to vote of the electorate initiatives and referendums required by Applicable Law to be placed on a ballot and fulfill any legal responsibility to defend a ballot measure passed by its voters, shall not support, adopt, or enact any New City Law, or take any other action which would violate the express provisions or spirit and intent of this Development Agreement.

Section 4.7 Timing of Development. Except as otherwise provided for in the Project Approvals and this Development Agreement, Developer shall have the vested right to develop the Project in such order, at such rate, and at such times as Developer deems appropriate in the exercise of its business judgment. In particular, and not in any limitation of any of the foregoing, since 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 consider, and expressly provide for, the timing of

development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the desire of the Parties hereto to avoid that result. Notwithstanding the adoption of an initiative after the Effective Date by City's electorate to the contrary, the Parties acknowledge that, except as otherwise provided for in the Project Approvals and this Development Agreement, Developer shall have the vested right (but not the obligation) to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its business judgment. Developer retains sole and absolute discretion as to whether and when to develop the Project, subject only to applicable law (including conditions of approval) and the expiration of Project entitlements.

Section 4.8 Changes in the Law. As provided in Section 65869.5 of the Development Agreement Law, this Development Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans, or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or by changes in laws, regulations, plans, or policies of special districts or other governmental entities, other than City, created or operating pursuant to the laws of the State of California ("**Changes in the Law**"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Development Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this Development Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such Changes in the Law. In such event, this Development Agreement together with any required modifications shall continue in full force and effect. In the event that the Changes in the Law operate to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Development Agreement, Developer may terminate this Development Agreement by Notice to City. Nothing in this Development Agreement shall preclude Developer from contesting by any available means (including administrative or judicial proceedings) such Changes in the Law or their applicability to the Project and, in the event that such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect unless the Parties mutually agree otherwise.

Section 4.9 Sanitary Sewer and Potable Water Capacity. City has found the Project to be consistent with the General Plan which anticipates that there will be sufficient potable water supply and dry weather sanitary sewer treatment capacity to serve future development contemplated by the General Plan, including the Project. However, as noted in Section 4.1 above, nothing in this Development Agreement is intended to exempt the Project or the Property from any water use rationing requirements that may be imposed on a City-wide basis from time to time in the future or be construed as a reservation of any existing sanitary sewer treatment capacity or potable water supply.

Section 4.10 Conditions of Subsequent Approvals. No conditions imposed on Subsequent Approvals (defined in Section 9.1) shall require dedications or reservations for, or construction or funding of, public infrastructure or public improvements beyond those included in the Project Approvals, except as required or expressly permitted by this Development Agreement.

Section 4.11 Sets of Project Approvals. Prior to the Effective Date, the Developer shall have prepared two sets of the Project Approvals, one set for City and one set for Developer, to which shall be added from time to time with any Subsequent Approvals, so that if it becomes necessary in the future to refer to any of the Project Approvals, there will be a common set available to the Parties. Failure to include any rule, regulation, policy, standard, or specification in the sets of Project Approvals as described in this Development Agreement shall not affect the applicability of such rule, regulation, policy, standard, or specification.

Section 4.12 Conflict with Conditions of Approval. To the extent there is an inconsistency between the terms of this Development Agreement and the conditions of approval imposed by the City through the Project Approvals, this Development Agreement shall prevail.

ARTICLE 5. FEES, TAXES, AND ASSESSMENTS

Section 5.1 Developer Impact Fees.

A. Definition of Impact Fees. For purposes of this Development Agreement, "**Impact Fees**" shall mean the monetary fees and impositions, other than taxes and assessments, charged by City and, except as otherwise expressly provided for herein, in effect as of the Effective Date, in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of a development project or the development of the public facilities and services related to a development project, including but not limited to: East Whisman Precise Plan Development Fees, Utility Capacity Fees, Sewer Fees, Citywide Transportation Fee, and any other City "fee" as that term is defined by Government Code Section 66000(b). For purposes of this Development Agreement, and subject to the requirements of Section 2.2(B), the Parties agree that no further or additional park fees shall be due or owing from the Developer as an Impact Fee under this Development Agreement.

1. For purposes of this Development Agreement, "**New Impact Fees**" means those Impact Fees adopted by City after the Effective Date of this Development Agreement. New Impact Fees do not include automatic escalation of Impact Fees already in effect as of the Effective Date.

2. In order to achieve balanced growth in the EWPP, the City's Jobs-Housing Linkage program encourages office and residential growth to occur in tandem. For purposes of this Development Agreement, the City agrees to extend the expiration of the credit that Developer is entitled to under the EWPP Jobs-Housing Linkage program for ten (10) years after issuance of any Certificate of Occupancy for the Project.

B. Payment of Impact Fees. For the period commencing on the Effective Date and continuing until expiration of the Initial Term, Developer shall pay when due all Impact Fees applicable to the Project and Affordable Housing Project in accordance with this Development Agreement in effect as of the Effective Date at the rates in effect as of the Effective Date, subject to any rate escalators in effect on the Effective Date or, in the absence of any built in rate escalators, the Consumer Confidence Index ("**CCI**"). Neither the Project nor the Affordable Housing Project shall be subject to New Impact Fees for the duration of the Initial Term.

1. Payment of Impact Fees for Extended Term.

a. Extension Terms. If the First Extension Term or Second Extension Term are granted by the City Manager pursuant to Section 3.4, all Impact Fees applicable to the Project shall be calculated at the rates in effect as of the Effective Date for the duration of the First Extension Term or Second Extension Term, as applicable. The Project shall not be subject to New Impact Fees for the duration of the Extended Term.

C. The Impact Fees itemized on Exhibit F represent the Parties' good faith effort to identify the Impact Fees applicable to the Project and their respective rates as of the Effective Date, including the applicable escalators as set forth in the City's Impact Fee ordinances, resolutions or, where applicable, the CCI. The Impact Fees itemized on Exhibit F include City wastewater and water capacity and connection charges, as set forth in the Mitigation Fee Act (Government Code section 66013 *et seq*.) Except with respect to any park fees, City and Developer agree to amend and restate Exhibit F, as necessary, in the event one or more Impact Fees have been inadvertently omitted or if any escalation provisions have been inadvertently misstated or miscalculated.

D. Developer acknowledges and agrees that: (a) the Project Approvals provided adequate and proper notice pursuant to Government Code Section 66020 of Developer's right to protest any requirements for fees, dedications, reservations, and other exactions as may be included in this Development Agreement; and, (b) if no protest in compliance with Section 66020 is made within ninety (90) days of the date that notice was given, the period in which Developer may protest any and all fees, dedications, reservations, and other exactions as may be included in this Development Agreement will have been waived by the Developer.

E. Except as otherwise expressly provided for herein, Developer shall not be entitled to any credits toward Impact Fees or New Impact Fees due on account of the Community Benefits provided by Developer under this Development Agreement.

F. Connection Fees. For purposes of this Development Agreement, "**Connection Fees**" means those fees charged by the City or by a utility provider to utility users as a cost for connection to water, sanitary sewer, and other applicable utilities, as of December 23, 2024, which is the date that the Developer submitted its SB 330 preliminary application.

G. Processing Fees. For purposes of this Development Agreement, "**Processing Fees**" means all fees charged on a City-wide basis as part of the City's Master Fee Schedule to cover the cost of City processing of development project applications, including any required supplemental or other further environmental review, plan checking (time and materials) and inspection and monitoring for land use approvals, design review, grading and building permits, General Plan maintenance fees, and other permits and entitlements required to implement the Project, which fees are in effect at the time those permits, approvals, or entitlements are applied for, and which fees are intended to cover the City's actual costs of processing the foregoing. Subject to Developer's right to protest and/or pursue a challenge in law or equity to any new or increased Processing Fees, City may charge and Developer agrees to pay all Processing Fees which are in effect on a City-wide basis at the time developer applies for permits, approvals, or entitlements.

H. Other Agency Fees. Nothing in this Development Agreement shall preclude City from collecting fees from Developer that are lawfully imposed by another agency having jurisdiction over the Project, which City is required to collect pursuant to Applicable City Regulations, State or Federal Law.

Section 5.2 Taxes and Assessments. Developer covenants and agrees to pay prior to delinquency all existing taxes and assessments and any and all new taxes or assessments that are adopted after the Effective Date and which conform to the terms of this Development Agreement, including this Section 5.2. As of the Development Agreement Date, City is unaware of any pending efforts to initiate or consider applications for new or increased special taxes or assessments covering the Property, or any portion thereof. City shall retain the ability to initiate or process applications for the formation of new assessment districts or imposition of new taxes covering all or any portion of the Property in accordance with the Applicable City Regulations, but only if such taxes or assessments are adopted by or after Citywide voter approval, or approval by landowners subject to such taxes or assessments, and are imposed on other land and projects of the same category within the jurisdiction of City in a reasonably proportional manner as determined by City, and, as to assessments, only if the impact thereof does not fall disproportionately on the Property as compared to the benefits accruing to the Property as indicated in the engineers report for such assessment district. Nothing herein shall be construed so as to limit Developer from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property.

Section 5.3 MMRP Fair Share Contributions. As set forth in Section 8.8 below, Developer is required and agrees to comply with all mitigation measures adopted as part of the Project Approvals, including but not limited to designing and installing, to the extent applicable, upgrades to the water system, sanitary sewer system, stormwater system and street network. Specifically, as provided by the Project Approvals, the Developer shall be required to bear the cost of the design, constructing or installing these upgrades and improvements, including but not limited to the installation [XXX].

Section 5.4 Offsets and Credits. In the event an assessment district is lawfully formed or a similar mechanism is created to provide funding for services, improvements, maintenance or facilities which are substantially the same as those services, improvements, maintenance or facilities being funded by the Impact Fees and/or fair-share contributions identified in Section 5.3 hereof to be paid by Developer under the Project Approvals or this Development Agreement, then such Impact Fees and/or fair-share contributions payable by Developer shall be subject to reduction/credit in an amount equal to Developer's new or increased assessment under the assessment district or similar mechanism. Alternatively, the new assessment district or similar mechanism shall reduce/credit Developer's new assessment in an amount equal to such Impact Fees to be paid by Developer under the Project Approvals or this Development Agreement. In calculating any reduction or credit, the Parties shall take into account the timing of payment of the Impact Fee and the new or increased assessment.

Section 5.5 City of Mountain View Business License. Developer, at its expense, shall obtain and maintain a City of Mountain View business license at all times during the Term, and shall include a provision in all general contractor agreements for the Project requiring each such

general contractor to obtain and maintain a City of Mountain View business license during performance of the work of construction.

ARTICLE 6. ANNUAL REVIEW

Section 6.1 Periodic Review.

A. Purpose. As required by California Government Code section 65865.1, City and Developer shall review this Development Agreement and all actions taken pursuant to the terms of this Development Agreement with respect to the development of the Project every 12 months following the Effective Date to determine good faith compliance with this Development Agreement. Each annual review shall also document the status of the Project development.

B. Conduct of Annual Review. The annual review shall be conducted as provided in this Section 6.1, with the cost to cover the City's costs to conduct the review to be collected from the Developer, as designated in Mountain View City Code Section 36.56.15. Each year, or by _____of each year, Developer shall provide documentation of its good faith compliance with this Development Agreement during the year by submitting a completed Annual Review Form in the form provided in Exhibit C ("**Annual Review Form**") and such other information as may reasonably be requested by the City Manager. If Developer fails to timely provide such documentation, City shall provide a courtesy reminder to Developer in writing, after which Developer shall have thirty (30) days to provide the documentation.

1. If the City Manager or designee finds good faith compliance by Developer with the terms of this Development Agreement, Developer shall be notified in writing within thirty (30) days and the review for that period shall be concluded.

2. If the City Manager is not satisfied that Developer is performing in accordance with the terms and conditions of this Development Agreement, the City Manager shall prepare a written staff report for the Council's consideration to specify why Developer may not be in good faith compliance with this Development Agreement, refer the matter to the City Council, and notify Developer in writing at least fifteen (15) business days in advance of the time at which the matter will be considered by the City Council. This notice shall include the time and place of the City Council's meeting to evaluate good faith compliance with this Development Agreement, a copy of the City Manager's report and recommendations, if any, and any other information reasonably necessary to inform Developer of the nature of the proceeding.

a. The City Council shall conduct a hearing at which Developer must submit evidence that it has complied in good faith with the terms and conditions of this Development Agreement. Developer shall be given an opportunity to be heard at the hearing. The findings of the City Council on whether Developer has complied with this Development Agreement for the period under review shall be based upon substantial evidence in the record. If the City Council determines, based upon substantial evidence, that Developer has complied in good faith with the terms and conditions of this Development Agreement, the review for that period shall be concluded. If the City Council determines, based upon substantial evidence in the record, that Developer has not complied in good faith with the terms and conditions of this Development Agreement, or there are significant questions as to whether Developer has complied with the terms

and conditions of this Development Agreement, the City Council, at its option, may continue the hearing and may notify Developer of the City's intent to meet and confer with Developer within thirty (30) days of such determination, prior to taking further action. Following such meeting, the City Council shall resume the hearing in order to further consider the matter and to make a determination regarding Developer's good faith compliance with the terms and conditions of this Development Agreement. In the event City determines Developer is not in good faith compliance with the terms and conditions of this Development Agreement, City may exercise its right to terminate this Development Agreement by written Notice to Developer (without any requirement of a further public hearing pursuant to Section 11.2) or pursue legal action under Section 11.4.

C. Failure to Conduct Annual Review. Failure of City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Development Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

D. Certificate of Compliance. If, at the conclusion of the annual review described in Section 6.1.B, the Developer is found to be in compliance with this Development Agreement, City shall, upon request by Developer, issue a Certificate of Compliance ("**Certificate**") to Developer stating that after the most recent annual review and based upon the information actually known to an appropriate official of City specified in such Certificate that: (1) this Development Agreement remains in effect, and (2) the Developer is not in Default. The Certificate shall be in a recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, and shall state the anticipated date of commencement of the next annual review. Developer may record the Certificate without cost or expense to City.

ARTICLE 7. MORTGAGEE PROTECTION

Section 7.1 Mortgagee Protection. This Development Agreement shall not prevent or limit Developer in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing with respect to the Property ("**Mortgage**"). This Development Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the Development Agreement, including the lien of any 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 and shall run to the benefit of any person or entity, including any deed of trust beneficiary, or mortgagee ("**Mortgagee**"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

Section 7.2. Mortgagee Not Obligated. Notwithstanding the provisions of Section 7.1 above, no Mortgagee shall have any obligation or duty under this Development Agreement to construct or complete the construction of the Project, or any portion thereof, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with the Project Approvals and this Development Agreement nor to construct any improvements thereon or institute any uses other than those uses

and improvements provided for or authorized by the Project Approvals and this Development Agreement.

Section 7.3 Notice of Default to Mortgagee; Right to Cure. With respect to any Mortgage granted by Developer as provided herein, then so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

A. City, upon serving Developer any Notice of Default (as defined in Section 11.1), shall also serve a copy of such Notice upon any Mortgagee at the address provided to City, and no Notice by City to Developer hereunder shall affect any rights of a Mortgagee unless and until a copy thereof has been so served on such Mortgagee; provided, however, that failure so to deliver any such Notice shall in no way affect the validity of the Notice sent to Developer as between Developer and City.

B. In the event of a Default (as defined in Section 11.1) by Developer, any Mortgagee shall have the right to remedy, or cause to be remedied, such Default within sixty (60) days following the later to occur of (1) the date of Mortgagee's receipt of the Notice referred to in Section 7.3.A above, or (2) the expiration of the period provided herein for Developer to remedy or cure such Default, and City shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by Developer; provided, however, that (1) if such Default is not capable of being cured within the timeframes set forth in this Section 7.3.B and Mortgagee commences to cure the Default within such timeframes, then Mortgagee shall have such additional time as is required to cure the Default so long as Mortgagee diligently prosecutes the cure to completion and (2) if possession of the Property (or portion thereof) is required to effectuate such cure or remedy, the Mortgagee shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the Notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy.

C. Any Notice or other communication which City shall desire or is required to give to or serve upon the Mortgagee shall be in writing and shall be served in the manner set forth in Section 13.5, addressed to the Mortgagee at the address provided by Mortgagee to City. Any Notice or other communication which Mortgagee shall give to or serve upon City shall be deemed to have been duly given or served if sent in the manner and at City's address as set forth in Section 13.5, or at such other address as shall be designated by City by Notice in writing given to the Mortgagee in like manner.

Section 7.4 No Supersedure. Nothing in this Article 7 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside this Development Agreement, nor shall any provision of this Article 7 constitute an obligation of City to such Mortgagee, except as to the Notice requirements of Section 13.5.

Section 7.5 Technical Amendments to this Article 7. City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Development Agreement that are required by lenders for the acquisition and construction of the improvements on the Property or any refinancing thereof and to otherwise cooperate in good faith, at Developer's

expense, to facilitate Developer's negotiations with lenders. Such interpretations and/or technical amendments shall be made by the City Manager and considered to be a Minor Amendment, as that term is defined in Section 8.2 of this Development Agreement.

ARTICLE 8. AMENDMENT OF DEVELOPMENT AGREEMENT OR PROJECT APPROVALS

Section 8.1 Amendment of Development Agreement by Mutual Consent. This Development Agreement may be terminated, modified or amended from time to time in whole or in part only by mutual written consent of the Parties hereto or their successors-in-interest or assigns, as further provided below. Upon written request of Developer for an amendment or modification of this Development Agreement, the City Manager or City Manager's designee shall determine whether the requested amendment or modification is a Minor Amendment, as defined in Section 8.2, when considered in light of the Project as a whole. For purposes of this Development Agreement, the City Manager or City Manager's designee's determination of whether the requested amendment or modification is Minor or Major shall be deemed final and not subject to further appeal.

Section 8.2 Definition of Minor Amendments. For purposes of this Development Agreement, a "**Minor Amendment**" shall be any change or modification to the Development Agreement that does not substantially affect the following:

A. The Term of this Development Agreement;

B. Except for the ground floor retail and/or commercial spaces, the permitted uses of the Property;

C. Provisions for the reservation or dedication of land;

D. Conditions, terms, restrictions, or requirements for subsequent discretionary actions;

E. The density or intensity of use of the Property or the maximum height or size of proposed buildings;

F. The nature, timing of delivery, or scope of public improvements required by the Project Approvals;

G. The amount of any monetary contributions or Community Benefits offered by Developer as part of this Development Agreement;

Section 8.3 Minor Amendment to the Development Agreement. If the City Manager or designee determines that the amendment or modification is a Minor Amendment to the Development Agreement as set forth in Section 8.2, the Minor Amendment maybe approved by the City Manager or designee in writing as an "Administrative Amendment," and shall not, except to the extent otherwise required by Applicable City Regulations, require notice or public hearing before the Parties may execute the Administrative Amendment.

Section 8.4 Major Amendment. Any amendment to this Development Agreement other than a Minor Amendment as defined in Section 8.2 shall be deemed a "**Major Amendment**." Any Major Amendment shall be subject to approval by the City Council by ordinance following duly noticed public hearing before the Zoning Administrator and City Council consistent with Government Code sections 65867, 65867.5 and 65868.

Section 8.5 Requirement for Writing. No modification, Minor or Major Amendment, or other change to this Development Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing that refers expressly to this Development Agreement and is signed by duly authorized representatives of both Parties or their successors. The City Manager shall provide a copy of any such change to the City Council within thirty (30) days of its execution.

Section 8.6 Amendments to Development Agreement Law. This Development Agreement has been entered into in reliance upon the provisions of the Development Agreement Law as those provisions existed as of the Effective Date of this Development Agreement. No amendment or addition to those provisions which would materially affect the interpretation or enforceability of this Development Agreement shall be applicable to this Development Agreement, unless such amendment or addition is specifically required by the California State Legislature, or is mandated by a court of competent jurisdiction. In the event of the application of such Changes in the Law, the Parties shall meet in good faith to determine the feasibility of any modification or suspension that may be necessary to comply with such Changes in the Law and to determine the effect such modification or suspension would have on the purposes and intent of this Development Agreement. Following the meeting between the Parties, the provisions of this Development Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such Changes in the Law. If such Change in the Law is permissive (as opposed to mandatory), this Development Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this Development Agreement to permit such applicability. Developer and/or City shall have the right to challenge any Changes in the Law preventing compliance with the terms of this Development Agreement, and in the event such challenge is successful, this Development Agreement shall remain unmodified and in full force and effect.

Section 8.7 Amendments to Project Approvals. Project Approvals (not including amendments to this Development Agreement, as set forth above in Sections 8.3 through 8.5) may be amended or modified from time to time, subject to the written request of Developer or with the written consent of Developer at its sole discretion. Except as otherwise provided for herein, City shall not request, process, or consent to any amendment to the Project Approvals that would affect the Property or the Project without Developer's prior written consent. Amendments to the Project Approvals shall be governed by the Project Approvals and by the Applicable City Regulations. Once approved by City, all amendments shall automatically become part of the Project Approvals, as described in Recital L of this Development Agreement.

Section 8.8 Amendments and CEQA/Mitigation Measures. The City has prepared a consistency analysis in support of an exemption under CEQA pursuant to AB 130. However, the Parties acknowledge that certain amendments may legally require additional analysis under CEQA. For example, a change in the Project Approvals could require additional analysis under

CEQA if the triggering conditions identified in CEQA Guidelines Section 15162 are met. In the event supplemental or additional CEQA review is required for an amendment, City shall conduct such supplemental or additional CEQA review to the scope of analysis mandated by CEQA in light of the scope of City's discretion to be exercised in connection with the amendments. Developer acknowledges that, if the City determines based upon supplemental or additional CEQA review that the amendments to the Project Approvals will result in new significant effects, City may require feasible mitigation measures necessary to mitigate such impacts, provided however (except as otherwise expressly provided herein) such mitigation measures shall not prevent development of the Project for the uses set forth in the Project Approvals. Developer shall comply with the mitigation measures, which shall reflect the mutually agreed-upon timing of specified improvements and Developer's pro rata share of funding, where applicable. In the event mitigation measures are identified by such additional environmental review, City may require, and Developer shall comply with, all feasible mitigation measures necessary to substantially lessen new or substantially more severe significant environmental impacts of the Project Approvals, which were not foreseen at the time of execution of this Development Agreement. For the avoidance of doubt, the parties understand that this section of the Agreement neither expands nor limits the City's authority and discretion under CEQA.

ARTICLE 9. SUBSEQUENT APPROVALS AND IMPLEMENTATION

Section 9.1 Subsequent Approvals. Certain subsequent land use approvals, entitlements, agreements and permits other than the Project Approvals, will be necessary or desirable for implementation of the Project ("**Subsequent Approvals**"). The Subsequent Approvals from the City may include, without limitation, the following: amendments to the Project Approvals, master sign permit program approval, Public Works approval of plat map and legal description of the owner's property and public access easement, excavation permit, and/or issuance of grading permits, building permits (including demolition permits), tree removal permits, sewer and water connection permits, sewer and water service applications, certificates of occupancy, lot line adjustments, site plans, development plans, land use plans, building plans and specifications, parcel maps, final maps and/or subdivision maps, design review, demolition permits, improvement agreements, encroachment permits, temporary special event permits, and any amendments to, or repealing of, any of the foregoing. Subsequent Approvals from other entities, may include, without limitation the following: a permit from the Bay Area Air District, soil and groundwater management plan approval from the Environmental Protection Agency (EPA) and Santa Clara County Department of Environmental Health (SCCDEH), a soil management plan from the EPA, and State of California Construction General Stormwater permit, and any amendments to, or repealing of, any of the foregoing.

Section 9.2 Scope of Review of Subsequent Approvals. City shall not use its authority in considering any application for a Subsequent Approval to change the policy decisions reflected in the Project Approvals and this Development Agreement. Instead, the scope of review of applications for Subsequent Approvals shall be limited to review of substantial conformity with the Project Approvals, Applicable City Regulations, and compliance with CEQA. City shall not impose conditions or exactions on Subsequent Approvals that exceed the requirements of, or are otherwise inconsistent with, the Project Approvals, except as expressly permitted by this Development Agreement or otherwise required by Applicable City Regulations. At such time as any Subsequent Approval applicable to the Property is approved by City, then such Subsequent

Approval shall become subject to all the terms and conditions of this Development Agreement applicable to Project Approvals and shall be incorporated therein and treated as part of the "Project Approvals" as defined in Recital G in this Development Agreement.

Section 9.3 Processing Applications for Subsequent Approvals.

A. Developer acknowledges that City cannot begin processing applications for Subsequent Approvals until Developer submits complete applications. Developer shall use diligent good faith efforts to provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder, and cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under the Applicable City Regulations. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals.

B. Upon submission by Developer of all appropriate applications and Processing Fees for any pending Subsequent Approval, City shall, to the full extent allowed by the Applicable City Regulations, promptly and diligently, subject to City ordinances, policies and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Developer's currently pending Subsequent Approval applications including:

1. Upon the written request of the Developer, providing at Developer's sole cost and expense and subject to City's ability to obtain such services, additional staff and/or staff consultants for planning and processing of each pending Subsequent Approval application (Developer shall pay such costs at cost plus ten percent (10%) for administrative costs incurred);

2. If legally required, providing notice and holding public hearings; and,

3. Acting on any such pending Subsequent Approval application.

C. Any subsequent discretionary action or discretionary approval initiated by Developer that is not otherwise permitted by or contemplated in the Project 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, except for Project Approval amendments contemplated in Section 8.7, shall be subject to the rules, regulations, ordinances, and official policies of the City then in effect at the time of application and City reserves full and complete discretion with respect to any findings to be made in connection therewith.

Section 9.4 Other Agency Subsequent Approvals; Authority of City. Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Development Agreement does not limit the authority of such other public agencies on the Project ("**Other Agency Subsequent Approvals**"). Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Development Agreement in all respects when dealing with any such agency regarding the Property. City shall cooperate with Developer, at Developer's expense, to the extent appropriate and as permitted by the Applicable City Regulations, in

Developer's efforts to obtain, as may be required the Other Agency Subsequent Approvals. Nothing in this Section 9.4 shall relieve Developer of its obligation to comply with the Project Approvals, notwithstanding any conflict between the Other Agency Subsequent Approvals and the Project Approvals. Notwithstanding the issuance to Developer of Other Agency Subsequent Approvals, Developer agrees that City may reasonably review and comment upon any materials or applications associated with Other Agency Subsequent Approvals to ensure consistency with the Project Approvals and Developer shall make diligent good faith efforts to incorporate any and all changes requested by City prior to submitting such materials and applications for review and/or approval to the other governmental or quasi-governmental entities with jurisdiction over the Project.

Section 9.5 Revision to Project. In the event of a court order issued as a result of a successful Litigation Challenge as defined in Section 12.3, City shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Project Approvals, and in order to avoid or minimize to the greatest extent possible any impact to the development of the Project as provided for in, and contemplated by, the Project Approvals and this Development Agreement, or any conflict with the Project Approvals or this Development Agreement or frustration of the intent or purpose of the Project Approvals or this Development Agreement.

Section 9.6 State, Federal, or Case Law. Where any state, federal, or case law allows City to exercise any discretion or take any act with respect to that law, City shall, in an expeditious and timely manner, at the earliest possible time, exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Development Agreement and take such other actions as may be necessary to carry out in good faith the terms of this Development Agreement.

Section 9.7 Defense of Development Agreement. City, at Developer's expense, shall take all actions that are necessary or advisable to uphold the validity and enforceability of this Development Agreement. If this Development Agreement is adjudicated or determined to be invalid or unenforceable, City agrees, subject to all legal requirements, to consider modifications to this Development Agreement to render it valid and enforceable to the extent permitted by the Applicable City Regulations and State or Federal law.

ARTICLE 10. ASSIGNMENT, TRANSFER AND NOTICE

Section 10.1 Transfers and Assignments. Developer shall have the right to sell, assign, or transfer ("**Transfer**") in whole or in part its rights, duties, and obligations under this Development Agreement without the consent of City; provided, however, in no event shall the rights, duties, and obligations conferred or imposed upon Developer pursuant to this Development Agreement be at any time so transferred except through a transfer of the Property and all such Transfers shall be made in accordance with the requirements of this Section 10.1. In the event of a transfer of a portion of the Property, Developer shall have the right to Transfer its rights, duties, and obligations under this Development Agreement that are applicable to the transferred portion, and retain all rights, duties, and obligations applicable to the retained portions of the Property.

A. Upon Developer's request, City, at Developer's expense, shall cooperate with Developer and any proposed transferee to allocate rights, duties, and obligations under the

Project Approvals and this Development Agreement between the transferred Property and the retained Property; provided, however, in no event shall Developer Transfer its obligations under Article 2 (Community Benefits) to any third party acquiring less than ninety percent (90%) of the acreage of the Property.

B. Developer shall notify City in writing of any proposed Transfer at least thirty (30) days prior to completing such Transfer. At least twenty-one (21) days prior to the effective date of the Transfer, Developer shall deliver to City a draft of the proposed written assignment and assumption agreement in which the transferee expressly agrees to assume the rights and obligations of Developer under this Development Agreement being transferred. The assignment and assumption agreement shall be in substantially the same form attached hereto as Exhibit E. No later than ten (10) business days after the date the Transfer becomes effective, Developer shall deliver to City a conformed copy of the fully executed and recorded assignment and assumption agreement.

Section 10.2 Release upon Transfer. Upon the Transfer of Developer's rights and interests under this Development Agreement pursuant to this Article 10, Developer shall automatically be released from its obligations and liabilities under this Development Agreement with respect to that portion of the Property transferred, and any subsequent default or breach with respect to the transferred rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Development Agreement, provided that Developer has provided to City written Notice of such Transfer and a written agreement executed by the transferee in accordance with Section 10.1 above. Upon any Transfer of any portion of the Property and the express assumption of Developer's obligations under this Development Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Development Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Developer's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferor and the transferee shall each be solely responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferor/transferee, and any amendment to this Development Agreement between City and a transferor or a transferee shall only affect the portion of the Property owned by such transferor or transferee. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 13.4 below, nor shall such failure negate, modify, or otherwise affect the liability of any transferee pursuant to the provisions of this Development Agreement.

ARTICLE 11. DEFAULT; REMEDIES; TERMINATION

Section 11.1 Breach and Default. The failure by a Party to perform any material action or covenant required by this Development Agreement within thirty (30) days following receipt of written Notice from the other Party specifying the failure shall constitute a "**Default**" under this Development Agreement; provided, however, that if the failure to perform cannot be reasonably cured within such thirty (30) day period, a Party shall be allowed additional time as is reasonably necessary to cure the failure so long as such Party commences to cure the failure within the thirty (30) day period and thereafter diligently prosecutes the cure to completion. Notwithstanding

anything to the Notice of Default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Default, all facts constituting evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Development Agreement. The waiver by either Party of any Default under this Development Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Development Agreement, including the right to terminate this Development Agreement as set forth in Section 11.2 below.

A. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in Default for the following:

1. Termination of this Development Agreement;

2. Institution of legal proceedings with respect thereto; or

3. Issuance of any approval with respect to the Project.

Section 11.2 Termination. In the event of a Default by a Party, the non-defaulting Party shall have the right to initiate legal proceedings pursuant to Section 11.4 and/or terminate this Development Agreement upon giving Notice of Intent to Terminate pursuant to Government Code Section 65868. Following Notice of Intent to Terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code Section 65867 and for public hearing as set forth in Section 6.1.B above. Following consideration of the evidence presented in said review before the City Council, a Party alleging Default by another Party may give written Notice of termination of this Development Agreement to the other Party. Termination of this Development Agreement shall be subject to the provisions of Section 11.7 below. In the event that this Development Agreement is terminated pursuant to above or this Section 11.2 and the validity of such termination is challenged in a legal proceeding that results in a final decision that such termination was improper, then this Development Agreement shall immediately be reinstated as though it had never been terminated.

Section 11.3. City Remedies. In the event of a breach of this Development Agreement, its invalidation (whether by a court of law or referendum), and/or termination, in addition to any remedies provided herein, the City may, in its sole discretion, institute appropriate actions to withhold, condition, suspend or revoke any legislative action, permit, license, or other entitlement for the Project Approvals, including without limitation final inspections for occupancy and/or certificates of occupancy, in accordance with the requirements of the City's Municipal and Zoning Code, it being understood that nothing herein is intended to limit the City's rights to exercise its police powers.

Section 11.4 Legal Actions.

A. Institution of Legal Actions. In addition to any other rights or remedies, a Party may institute legal action to cure, correct, or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the terms of this Development Agreement. This Development Agreement shall be construed and enforced in accordance with the laws of the State of California,

without reference to choice of law provisions. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of Santa Clara, 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 San Jose Northern District of the State of California shall be the proper venue.

B. Acceptance of Service of Process. In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Clerk of City or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon Developer's registered agent for service of process, or in such other manner as may be provided by law.

Section 11.5 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party, except as otherwise expressly provided herein.

Section 11.6 No Damages. In no event shall a Party, or its boards, commissions, members, officers, agents, or employees, be liable in damages for any Default under this Development Agreement, it being expressly understood and agreed that the sole legal remedy available to a Party for a breach or violation of this Development Agreement by another Party shall be an action in mandamus, specific performance, or other injunctive or declaratory relief to enforce the provisions of this Development Agreement by the other Party, or to terminate this Development Agreement. This limitation on damages shall not preclude actions by City to enforce payments of monies or the performance of obligations requiring an obligation of money from the Developer under the terms of this Development Agreement including, but not limited to, obligations to pay attorneys' fees and obligations to advance monies or pay funds under Article 2. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Development Agreement by the other Party.

Section 11.7 Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which is not provided for by this Development Agreement or Applicable City Regulations, a Party shall, at the request of another Party, meet with designated representatives of the requesting Party promptly following its request. The Parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this Section 11.6 shall in any way be interpreted as requiring that Developer and City reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the Parties to such meetings.

Section 11.8 Surviving Provisions. In the event this Development Agreement expires or is terminated, neither Party shall have any further rights or obligations hereunder, except for those obligations set forth in Section 12.2 (Indemnification) and Section 12.3 (Defense, Indemnification, and Cooperation in the Event of Legal Challenge), or expressly set forth herein as surviving the termination of this Development Agreement. In the event litigation is timely instituted, and a final judgment is obtained, which invalidates in its entirety this Development Agreement, neither Party shall have any obligations whatsoever under this Development Agreement, except for those obligations which by their terms survive termination hereof.

Section 11.9 California Claims Act. Compliance with the procedures set forth in this Article 11 shall be deemed full compliance with the requirements of the California Claims Act (Government Code Section 900 *et seq*.) including, but not limited to, the Notice of an event of Default hereunder constituting full compliance with the requirements of Government Code Section 910.

ARTICLE 12. INSURANCE AND INDEMNITY

Section 12.1 Insurance Requirements. In connection with development of the Project, Developer shall procure and maintain, or cause its contractor(s) to procure and maintain the following coverages, terms, and conditions:

> Commercial general liability policy with coverage at lease as broad as Insurance Services Office form CG 00 01, in an amount not less than Three Million Dollars ($3,000,000) per occurrence, and Five Million Dollars ($5,000,000) products and completed operations aggregate. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location, or the general aggregate limit shall be twice the required occurrence limit. Developer's general liability policy(s) shall be primary and not seek contribution from the City's coverage or contain an endorsement granting primary and non-contributory coverage. The policy(s) shall contain additional insured endorsements for ongoing and completed operations using Insurance Services Office form CG 20 10 (or equivalent) and form CG 20 37 (or equivalent) to provide that City and its officers, officials, employees, and volunteers are additional insureds under such policy(s). Any failure to comply with reporting provisions of the policies by Developer shall not affect coverage provided the City. Coverage shall state that Developer insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage shall contain a waiver of subrogation in favor of the City.
>
> Business Automobile Liability with coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01 (or equivalent) with a limit of no less than two million dollars ($2,000,000) per accident. Developer's automobile liability policy shall be primary and not seek contribution from the City's coverage or contain an endorsement granting primary and non-contributory coverage.

The limits of liability for commercial general liability and automobile liability may be provided through a combination of primary and excess or umbrella liability policies.

Developer shall maintain statutory Workers' Compensation Insurance and Employer's Liability Insurance with limits of at least one million dollars ($1,000,000). Developer shall submit to City, along with the certificate of insurance, a waiver of subrogation endorsement in favor of City, its officers, officials, employees, and volunteers. Proof of Worker's Compensation is not required if Consultant provides written verification that they have no employees.

Developer's insurance shall be placed with insurers with a current A.M. Best rating of no less than A: VII or a rating otherwise approved by the City in its sole discretion. Developer shall furnish at City's request appropriate certificate(s) of insurance, including all required endorsements, evidencing the coverage required of Developer hereunder. The certificate of insurance shall contain a statement of obligation on the part of each carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination (or ten (10) days advance notice in the case of cancellation for nonpayment of premiums) where the insurance carrier provides such notice to the Developer. If such a notification obligation is not available from the insurance carrier, the Developer will notify the City in writing of any imminent cancellation, or material change in coverage within three (3) business days. Liability coverage provided hereunder by Developer shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by City, and the policies shall include such coverage or be endorsed to provide the coverage.

Section 12.2 Indemnification. To the fullest extent permitted by law, Developer shall defend (with counsel reasonably acceptable to City), indemnify, assume all responsibility for, and hold harmless City Parties, from and against, any and all claims, causes of action, damages, demands, defense costs, injuries or deaths, liabilities, obligations, and costs or expenses, including attorneys' fees and costs, arising directly or indirectly from or in connection with, or caused, or on account of: (a) the work to construct the Project and its Community Benefits and public improvements, including the design, development, construction, and operation thereof; (b) the process for development of the Project, including any approval with respect thereto; and/or (c) any other transaction contemplated by this Development Agreement, whether such claims shall accrue or be discovered before or after expiration or termination of this Development Agreement. The City shall, after receipt of notice of the existence of such a claim for which it is entitled to indemnity hereunder, notify Developer in writing of the existence of such claim or commencement of such action. Developer's indemnity obligations under this Section 12.2 shall not extend to claims occasioned by the sole negligence or willful misconduct of City Parties. The provisions of this Section 12.2 shall survive termination or expiration of this Development Agreement.

Section 12.3 Defense, Indemnification, and Cooperation in the Event of a Legal Challenge.

A. The filing of any third party court action or proceeding instituted by a third party or other governmental entity or official against City or Developer relating to the Project Approvals, this Development Agreement, or construction of the Project shall not delay or stop the development, processing, or construction of the Project or approval of any Subsequent Approvals, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order.

B. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official against City or Developer relating to the Project Approvals, this Development Agreement, or construction of the Project ("**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. To the extent Developer desires to contest or defend such Litigation Challenge:

1. Developer shall take the lead role defending such Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice;

2. City may, in its sole discretion, elect to be separately represented by the legal counsel of its choice, with the reasonable costs of such representation to be paid by Developer;

3. Developer shall reimburse City, within thirty (30) days following City's written demand therefor, which may be made from time to time during the course of such Litigation Challenge, all reasonable costs and expenses incurred by City in connection with the Litigation Challenge, including City's reasonable administrative, legal, and court costs, and City Attorney oversight expenses, including the retention of outside counsel; and

4. Developer shall indemnify, defend, 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.

C. Upon request by Developer, City may enter into a joint defense agreement in a form reasonably acceptable to the City Attorney to facilitate the sharing of materials and strategies related to the defense of such Litigation Challenge without waiver of attorney client privilege. Any proposed settlement of a Litigation Challenge by a Party shall be subject to the approval of the other Party, such 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 Project Approvals, the settlement shall not become effective unless such amendment or modification is approved by City in accordance with Applicable Law, and City reserves its full legislative discretion with respect thereto. If Developer opts not to contest or defend such Litigation Challenge, City shall have no obligation to do so, but shall have the right to do so at its own expense.

ARTICLE 13. MISCELLANEOUS PROVISIONS

Section 13.1 Incorporation of Recitals, Exhibits, and Introductory Paragraph. The Recitals contained in this Development Agreement, the introductory paragraph preceding the Recitals, and the Exhibits attached hereto are hereby incorporated into this Development Agreement as if fully set forth herein.

Section 13.2 Severability. If any term or provision of this Development Agreement, or the application of any term or provision of this Development Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Development Agreement, or the application of this Development Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

Section 13.3 Construction. Each reference herein to this Development Agreement or any of the Project Approvals (including any amendments or Subsequent Approvals) shall be deemed to refer to the Agreement and the Project Approvals as it may be amended from time to time in accordance with this Development Agreement, whether or not the particular reference refers to such possible amendment. 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. This Development Agreement has been reviewed and revised by legal counsel for City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Development Agreement. Unless the context clearly requires otherwise, 1) the plural and singular numbers shall each be deemed to include the other; 2) the masculine, feminine, and neuter genders shall each be deemed to include the others; 3) "shall," "will," or "agrees" are mandatory, and "may" is permissive; 4) "or" is not exclusive; 5) "include," "includes" and "including" are not limiting and shall be construed as if followed by the words "without limitation;" and 6) "days" means calendar days unless specifically provided otherwise.

Section 13.4 Covenants Running with the Land. Except as otherwise more specifically provided in this Development Agreement, this Development Agreement and all of its provisions, rights, powers, standards, terms, covenants, and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code Section 65868.5.

Section 13.5 Notices. Any notice or communication required hereunder between City and Developer ("**Notice**") must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. Courtesy notice may be given by email but shall not constitute Notice under this Development Agreement. If personally delivered, a Notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by registered or certified mail, such Notice shall be deemed to have been given and received on the first to occur of (A) actual receipt by any of the addressees designated below as the Party to whom Notices are to be sent, or (B) five (5) days after a registered or certified letter containing such Notice, properly addressed,

with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a Notice shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written Notice to the other Party hereto, designate any other address in substitution of the address to which such Notice shall be given. Such Notices shall be given to the Parties at their addresses set forth below:

To City:
City Manager
CITY OF MOUNTAIN VIEW
500 Castro Street
Mountain View, CA 94041
Telephone: (650) 903-6301
Email: city.mgr@mountainview.gov

With a copy to:
City Attorney
CITY OF MOUNTAIN VIEW
500 Castro Street
Mountain View, CA 94041
Telephone: (650) 903-6303
Email: cityattorney@mountainview.gov

and:

To Developer:
WTA Middlefield, LLC
c/o Michelle Dillabough
431 Burgess Drive, Suite 200
Menlo Park, CA 94025
Telephone: 650.322.2121
Email: michelle@hsproperties.com

Jeff Stone
P.O. Box 477
Lafayette, CA 94549
Telephone: (925) 934-2711
Email: jbstone@diamondconstructioninc.com

With a copy to:
Matthew D. Visick
Reuben, Junius & Rose, LLP
One Bush Street, Suite 600
San Francisco, CA 94104
Telephone: (415) 567-9000
mvisick@reubenlaw.com

Section 13.6. Counterparts and Exhibits; Entire Agreement. This Development Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original. This Development Agreement, together with the Project Approvals and attached

Exhibits, constitutes the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter hereof.

Section 13.7 Recordation of Agreement. Pursuant to California Government Code Section 65868.5, no later than ten (10) days after City and Developer enter into this Development Agreement, the City Clerk shall record this Development Agreement in the Official Records of the County of Santa Clara. Thereafter, if this Development Agreement is terminated, modified, or amended, the City Clerk shall record notice of such action in the Official Records of the County of Santa Clara.

Section 13.8 No Joint Venture or Partnership. It is specifically understood and agreed to by and between the Parties hereto that:

A. The subject development is a private development;

B. City has no interest or responsibilities for, or duty to, third parties concerning any public improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Development Agreement or in connection with the various Project Approvals or Subsequent Approvals;

C. Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under the Project Approvals, this Development Agreement, the Subsequent Approvals, and Applicable Law; and

D. City and Developer hereby renounce the existence of any form of agency relationship, joint venture, or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

Section 13.9 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 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 in the future.

Section 13.10 City Approvals and Actions. Whenever reference is made herein to an action or approval to be undertaken by City, the City Manager or their designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise.

Section 13.11 Estoppel Certificates. A Party may, at any time during the Term of this Development Agreement, 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, the following: 1) this Development Agreement is in full force and effect and a binding obligation of the Parties; 2) this Development Agreement has not been amended or modified either orally or in writing, or if amended, identifying the amendments; 3) 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, 4) any other information reasonably requested. The requesting Party shall be responsible for all reasonable costs incurred by the Party from whom such certification is requested and shall reimburse such costs within thirty (30) days of receiving the certifying Party's request for reimbursement. The Party receiving a request hereunder shall execute and return such certificate, or give a written, detailed response explaining why it will not do so, within thirty (30 days following the receipt thereof. The failure of either Party to provide the requested certificate within such thirty (30) day period shall constitute a confirmation that this Development Agreement is in full force and effect and no modification or default exists. The City Manager shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

Section 13.12 No Third Party Beneficiaries. City and Developer hereby renounce the existence of any third party beneficiary to this Development Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

Section 13.13 Further Actions and Instruments. Each Party to this Development Agreement shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this Development Agreement, subject to satisfaction of the conditions of this Development Agreement. Upon the request of any Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Development Agreement to carry out the intent and to fulfill the provisions of this Development Agreement.

Section 13.14 Limitation on Liability. In no event shall any partner, officer, director, member, shareholder, employee, manager, representative, or agent of Developer or any manager or member of Developer be personally liable for any breach of this Development Agreement by Developer, or for any amount which may become due to City under the terms of this Development Agreement; or any elected or appointed official, member, officer, agent, or employee of City be personally liable for any breach of this Development Agreement by City or for any amount which may become due to Developer under the terms of this Development Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Development Agreement has been entered into by and between Developer and City as of the day and year first above written.

CITY:

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

By: _____
Kimbra McCarthy, City Manager
[signature must be notarized]

APPROVED AS TO FORM:

By: _____
Jennifer Logue, City Attorney

ATTEST:

By: _____
Heather Glaser, City Clerk

DEVELOPER:

WTA Middlefield LLC, a California limited liability company

By: _____

_____

_____
[signature must be notarized]

EXHIBIT A

PROPERTY MAP

EXHIBIT B

LEGAL DESCRIPTION OF PROPERTY

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

All of Parcel "B", as shown upon that certain Map entitled Parcel Map, being a portion of the Rancho Pastoria De Las Borregas and a portion of Tract No. 2724 recorded in Book 121 of Maps, at Pages 40, 41, 42, 43 and 44, Santa Clara County Records, which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on November 19, 1976, in Book 383 of Maps, at Page 50.

APN: 160-53-004

EXHIBIT C

ANNUAL REVIEW FORM

This Annual Review Form is submitted to the City of Mountain View ("**City**") by WTA Middlefield LLC ("**Developer**") pursuant to the requirements of California Government Code section 65865.1 regarding Developer's good faith compliance with its obligations under the Development Agreement between the City and Developer dated as of _____, 2026 ("**Development Agreement**"). All terms not otherwise defined herein shall have the meanings assigned to them in the Development Agreement:

Annual Review Period: October 1st to September 30.

[*Specify whether applicable Impact Fees, Capacity Fees, Processing Fees, Connection Fees and/or other fees due and payable have been paid during this annual review period.*

Describe any extension of the Term of the Development Agreement, including any extensions made as a result of Force Majeure Delay pursuant to Article 3 of the Development Agreement.

Summarize specific strategies to be followed in the coming year intended to facilitate the processing of permits and/or Project construction, including the construction of Affordable Housing Units.

Describe whether other applicable Development Agreement obligations were completed during this annual review period.

Specify whether Developer has assigned the Development Agreement in whole or in part or otherwise conveyed the Property or any portion thereof during this annual review period.]

The undersigned representative confirms that Developer is:

_____ In good faith compliance with its obligations under the Development Agreement for this annual review period.

_____ Not in good faith compliance with its obligations under the Development Agreement for this annual review period, in response to which Developer is taking the actions set forth in the attachment hereto.

IN WITNESS WHEREOF, Developer has executed this Annual Review Form as of this ____ day of _____ , 20__.

DEVELOPER:

_____ , a

_____

By: _____
Name: _____
Title: _____

EXHIBIT D

City of Mountain View
Affordable Housing Agreement Form

When Recorded, Mail to: Housing Department Attn:Affordable Housing Manager City of Mountain View 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

APN: _____

LIEN AND AGREEMENT BETWEEN THE CITY OF MOUNTAIN VIEW AND _____ [*OPTIONAL VARIABLE:* d.b.a. _____] REGARDING THE BELOW-MARKET-RATE (BMR) PROGRAM AND PAYMENT OF BMR IN-LIEU FEES AND PROVISION OF BMR HOUSING UNITS FOR A RESIDENTIAL PROJECT LOCATED AT _____

This AGREEMENT is dated for identification this ____ day of _____ 20___, by and between the CITY OF MOUNTAIN VIEW, a California charter city and municipal corporation, whose address is 500 Castro Street, P.O. Box 7540, Mountain View, California, 94039-7540 (hereinafter "CITY"), and _____, whose address is ___7____ (hereinafter "APPLICANT"), (CITY and APPLICANT hereinafter collectively "Parties" or individually "Party").

RECITALS

A. WHEREAS, on January 12, 1999, the City of Mountain View adopted a Below-Market-Rate (BMR) Housing Program set forth in Mountain View City Code, Chapter 36, Article XIV—Affordable Housing Program, to address the need for affordable housing in Mountain View; and

B. WHEREAS, APPLICANT intends to develop that certain property situated in the City of Mountain View, County of Santa Clara, State of California, generally known and described as _____ and more particularly described in Exhibit A, attached hereto and incorporated herein, with residential units; and

C. WHEREAS, on ___9___, APPLICANT received approval for a _____ Permit, with respect to the property, allowing development of a _____-unit _____ development (the "PROJECT"), subject to certain conditions; and

D. WHEREAS, such conditions include the fulfillment of CITY's Below-Market-Rate Housing Program requirements as set forth in Mountain View City Code, Chapter 36, Article XIV—Affordable Housing Program, and the City of Mountain View Below-Market-Rate Housing Program Administrative Guidelines.

AGREEMENT

NOW, THEREFORE, in consideration of the approval of the PROJECT and in order to ensure satisfactory performance by APPLICANT of the obligations under CITY's Below-Market-Rate Housing Program and the PROJECT approvals, the Parties hereto mutually covenant and agree as follows:

1. **Below-Market-Rate Program Obligations.** In conformance with CITY's Below-Market-Rate Housing Program, and in satisfaction of Condition No. _____ of the _____ Permit, APPLICANT agrees to comply with each of the following provisions with respect to the PROJECT:

a. APPLICANT shall provide _____ (___) BMR housing units to satisfy the BMR requirement for _____(____) of the housing units in the PROJECT. The designated BMR units are Unit Nos. _____, which are _____(____) units located as shown on Exhibit B, attached hereto and incorporated herein. The _____(____) BMR units shall be affordable to households with gross household incomes at or below one hundred percent (100%) of the HUD median household income for Santa Clara County, adjusted for household size and as published by the State Department of Housing and Community Development.

b. The _____(____) designated ownership BMR units shall be sold for not more than _____ Dollars ($_____) for each unit. The sales price for each unit will be adjusted each year on May 1 until the unit is sold to reflect increases or decreases in the County Median Income (CMI) as published by the California State Department of Housing. If a qualified BMR buyer has been notified in writing by CITY concerning the price of the BMR unit, the price of the BMR unit will be sold for the price as set forth in the notification letter and will not be increased in price.

c. The designated BMR units shall be comparable to market-rate units in their exterior appearance, materials, and finish quality. Internally, the designated BMR units may differ from market-rate units by eliminating certain amenities which are considered to be luxury items. For example, more expensive plumbing and lighting fixtures, hardwood floors, and marble entries may be considered luxury items and less expensive materials may be substituted. The following items shall be considered standard and may not be reduced

or eliminated: dishwashers, garbage disposals, cooking facilities, and laundry facilities (either on-site or in each individual unit). BMR units shall have access to all PROJECT amenities and recreational facilities available to market-rate units.

d. The requirements to provide _____(____) BMR units to cover _____(____) units of the PROJECT, and the payment of BMR in-lieu fees for the remaining _____(____) units in the PROJECT is binding on APPLICANT and his/her successors and assigns and shall run with the land. The requirement is also a personal obligation of APPLICANT. If APPLICANT fails to make _____(____) BMR units available and pay BMR In-Lieu fees as required herein, CITY may elect to pursue any legal remedy available, including, without limitation, the right of CITY to bring a legal action directly against APPLICANT for breach of APPLICANT's personal obligation to construct _____(____) BMR units and pay required BMR In-Lieu fees. In any action to collect the delinquent in-lieu fee, CITY shall be entitled to recover the in-lieu fee, interest, costs and reasonable attorney's fees.

e. In satisfaction of the BMR requirement for the remaining _____(___) units, APPLICANT shall pay BMR In-Lieu fees instead of providing an additional BMR unit. The BMR In-Lieu Fee shall be calculated as three percent (3%) of the actual sales price of each of the _____(____) designated in-lieu-fee units, proportionate to the unit mix in the PROJECT, as follows:

_____

The BMR In-Lieu Fee shall be paid to CITY upon close of escrow on the sale of each of the above-designated _____(____) BMR In-Lieu Fee units in the PROJECT. Said BMR In-Lieu fees shall be deposited into CITY's Housing Fund.

f. The purchasers of the designated BMR ownership units (Unit Nos. _____) shall be selected by CITY in accordance with the City of Mountain View Below-Market-Rate Housing Program Administrative Guidelines.

g. APPLICANT shall provide CITY with the name, address, and telephone number of the escrow officer and title company, and the escrow number(s) for the company processing the escrow(s) for the sale of the PROJECT units. No later than thirty (30) days prior to closing escrow on sale of the first unit, APPLICANT shall provide CITY with fully executed escrow instructions in CITY's standard form. If a unit is rented, the BMR In-Lieu Fee shall be collected and paid to CITY prior to issuance of a Certificate of Occupancy. Before sale of the designated BMR units, APPLICANT shall provide the PROJECT's escrow officer a copy of CITY's standard form escrow instructions for the BMR units in the PROJECT that requires the designated purchaser to enter into a BMR agreement with CITY prior to the close of escrow.

h. APPLICANT shall pay an in-lieu fee deposit to CITY, prior to the issuance of any building permits for the PROJECT, equal to ten percent (10%) of the estimated total in-lieu fees required for the PROJECT. This deposit shall be refunded to APPLICANT when in-lieu fees for the units in the PROJECT have been paid to CITY and escrow has closed on the sale of the _____(____) BMR units.

2. **Binding on Successors.** The terms, covenants, and conditions of this Agreement shall run with the land and shall apply to, and shall bind, the heirs, successors, executors, administrators, and assigns of APPLICANT and owner of the land underlying the PROJECT and described in Exhibit A.

3. **Change in PROJECT.** This Agreement has been negotiated between the Parties based upon the PROJECT described in this Agreement. Any substantive change in the PROJECT which would affect the BMR In-Lieu fees, or any alternative use of the property, will be subject to CITY's prior review of the new or revised PROJECT to determine whether CITY's Below-Market-Rate Housing Program would be applicable to such alternative use and to what extent this Agreement may require amendment.

4. **Applicable Laws and Attorneys' Fees.** This Agreement shall be construed and enforced pursuant to the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Santa Clara. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. Reasonable attorneys' fees of the City Attorney's Office, if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County.

5. **Amendment.** This Agreement may be amended in writing and signed by the Parties.

6. **Attachments or Exhibits.** Except as expressly referenced herein, no portion of any terms or conditions included in any attachments or exhibits shall be a part of this Agreement, and they shall have no force or effect. If any attachments or exhibits to this Agreement are inconsistent with this Agreement, this Agreement shall control.

7. **Entire Agreement.** This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein.

8. **Authority to Execute.** The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement.

9. **Waiver.** The failure of CITY to insist upon a strict performance of any of the terms, conditions, and covenants contained herein shall not be deemed a waiver of any rights or remedies that CITY may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions, and covenants contained herein.

10. **Headings.** The headings in this Agreement are inserted for convenience purposes only and shall not affect the terms of this Agreement.

11. **Public Records.** The Parties recognize and acknowledge that CITY is subject to the California Public Records Act, California Government Code Section 7920.000 and following. Public records are subject to disclosure.

12. **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid, or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

13. **Notices.** Any notice given under this Agreement shall be in writing and shall be given by delivering the same to such Party in person, by delivering the same to such Party by reputable overnight courier or express service, or by sending the same to such Party by registered or certified mail, return receipt requested, with postage prepaid. The address(es) of each Party for the giving of notices hereunder are, until changed as hereinafter provided, the following:

To CITY: Housing Department
Attention: Affordable Housing Manager
City of Mountain View
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

To APPLICANT: _____

With a copy to: _____ (optional)

Any notice will be deemed given on the date of delivery, on the date of refusal to accept delivery, or when delivery is first attempted but cannot be made due to a change of address for which no notice was given. A Party may change its notice address(es) at any time by giving written notice of such change to the other Party in the manner provided herein. Notice given by counsel shall be deemed given by the Party represented by such counsel.

14. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which in the aggregate shall constitute

one and the same instrument, and the Parties agree that signatures on this Agreement shall be sufficient to bind the Parties.

IN WITNESS WHEREOF, this Agreement, dated _____ for identification, between the City of Mountain View and _____ for the Below-Market-Rate (BMR) Housing Program, is executed by CITY and APPLICANT.

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

By: _____
Name: _____
City Manager

"APPLICANT":
___[_____
_____

By: _____

Name: _____

Title: _____

APPROVED AS TO CONTENT:

_____
Name: _____
Housing Director

_____
Name: _____
Affordable Housing Manager

FINANCIAL APPROVAL:

_____
Name: _____
Finance and Administrative
Services Director

APPROVED AS TO FORM:

_____
Name: _____
City Attorney

EXHIBIT E

OPTION TO ENTER INTO MASTER LEASE

(to Development Agreement by and between the City and Developer)

This **OPTION TO ENTER MASTER LEASE** ("**Option Agreement**") is entered into by and between **WTA Middlefield LLC**, a California limited liability corporation, ___("**Developer**"), and the **CITY OF MOUNTAIN VIEW**, a Charter City and municipal corporation ("**City**"), pursuant to Section ___ of that certain Development Agreement dated _____ ("**Development Agreement**"). Capitalized terms not defined herein shall have the meanings set forth in the Development Agreement.

1. Grant of Option. Developer hereby grants to City an exclusive, irrevocable option ("**Option**") to enter into a **Master Lease** for up to sixty (60) residential City Rent Guaranteed Units .

2. Term of Option. The Development Agreement obligates Developer to send a written notification to the Community Development Director when the Project is one (1) year from initiating construction, after which the City will have three (3) months to exercise the Option ("**Option Term**"). Failure to exercise the Option within the Option Term shall cause it to expire automatically without further action.

3. Method of Exercise. City shall exercise the Option by delivering to Developer:

a. An executed counterpart of this Option Agreement, and

b. A written Notice of Exercise substantially in the form attached as *Exhibit E-1*, (collectively, "**Exercise Notice**").

Delivery shall be made in any manner permitted for notices under the Development Agreement and shall be effective upon receipt.

Developer shall promptly execute the City-executed counterpart of this Option Agreement and return it to the City. Failure to do so shall not impair the City's exercise.

4. Effect of Exercise. Upon City's timely and proper exercise of the Option:

a. Developer and City shall be obligated to negotiate in good faith and execute a Master Lease in a form approved by the City Manager in consultation with the City Attorney, incorporating all material terms set forth in Section 2.4(B)(4) of the Development Agreement.

6. Recording. At City's election, this Option Agreement may be recorded in the Official Records of Santa Clara County. Developer shall execute any additional documents reasonably required to effectuate such recordation.

7. Binding Effect. This Option Agreement is binding upon and inures to the benefit of the successors, assigns, and transferees of the parties, consistent with the assignment provisions of the Development Agreement. Any successor to Developer shall take title subject to this Option.

8. Conflicts. If any provision of this Option Agreement conflicts with the Development Agreement, the terms of the Development Agreement shall govern.

9. No Waiver. Failure of City to exercise the Option at the earliest opportunity shall not constitute a waiver of its rights, and no delay shall prejudice the City's ability to exercise the Option at any time during the Option Term.

10. Counterparts. This Option Agreement may be executed in counterparts and shall be effective upon full execution by the City.

IN WITNESS WHEREOF, the parties have executed this Exhibit E Option Agreement as of the dates below.

CITY OF MOUNTAIN VIEW

By: _____
Name: _____
Title: _____
Date: _____

DEVELOPER: WTA Middlefield LLC

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT E-1

FORM OF NOTICE OF EXERCISE

Re: Exercise of Option to Enter Master Lease Guarantee – Development Agreement dated _____

To: WTA Middlefield LLC ("Developer")
Address: _____

PLEASE TAKE NOTICE that the **CITY OF MOUNTAIN VIEW ("City**") hereby exercises its Option to Enter the Master Lease pursuant to Section ___ of the Development Agreement and Exhibit E thereto.

Enclosed is an executed counterpart of the Option Agreement. City requests that Developer execute the attached counterpart and return it within five (5) business days.

Dated: _____

CITY OF MOUNTAIN VIEW
By: _____
Name: _____
Title: _____

EXHIBIT F

EXISTING RESIDENTIAL DEVELOPMENT FEES AND CHARGES

The following list gives general reference to the types of fees that are assessed to residential development as of _____, 2026, the effective date of this Development Agreement. Some of the fees are based on square footage of the particular residential units, while others are standard (flat fee) regardless of size of the dwelling unit. All of these fees may be adjusted by City (increased or decreased) from time to time during the life of the Project and the Agreement, pursuant to the enabling ordinance or resolution, and as provided for in this Development Agreement. Developer shall pay the amount of the particular fee in force and effect at the time of such building permit issuance, unless otherwise provided for in the enabling resolutions or ordinances.

Non-City Fees

- School Fees

City Fees

- Building Permit Plan Check Fees
- Improvement Plan check fees a- These are based on the cost of the offsite improvements using the following equation: _____
- Transportation Impact Fees – _____
- Water And Sewer Capacity Charges – _____
- East Whisman Development Impact Fee – _____
- Excavation Permit Fees – N/A
- Bonds/Securities: Prior to the issuance of any building permits, the property owner must sign a Public Works Department faithful performance bond (100% of Infrastructure Quantities) and materials/labor bond (100% of Infrastructure Quantities), or provide a cash deposit (100% of Infrastructure Quantities), or provide a letter of credit (150% of Infrastructure Quantities) securing the installation and warranty of the off-site improvements in a form approved by the City Attorney's Office in accordance with Section 27.36 of the City Code. – These two bonds are each equal to the offsite improvements cost.

Please note these fees are based on when the project was submitted (FY 24/25). Government Code allows for the annual increase of these fees as they are increased by an outside factor (Construction Cost Index for the Bay Area).