Recording Requested by and
Please Return to:

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

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SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF MOUNTAIN VIEW

AND

C-M EVELYN STATION, LLC

FOR THE 701-747 WEST EVELYN AVENUE COMMERCIAL PROJECT

_____, 20__

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DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF MOUNTAIN VIEW AND C-M EVELYN STATION, LLC

THIS DEVELOPMENT AGREEMENT ("Development Agreement") is made and entered into this ____ day of _____ 20__, by and between the CITY OF MOUNTAIN VIEW, a California charter city and municipal corporation, organized and existing under the laws of the State of California ("City"), and C-M EVELYN STATION LLC, a California limited liability company ("Owner"), pursuant to Government Code Sections 65864, *et seq*.

RECITALS

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

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

C. WHEREAS, Owner has a legal interest in certain real property located in City consisting of approximately one-quarter (0.25) acre and commonly known as 701 through 747 West Evelyn Avenue (collectively, the "Property"), which Property is described in the attached Exhibit A, and shown on the map attached as Exhibit B; and

D. WHEREAS, Owner desires to redevelop the Property by demolishing the existing commercial buildings (eight thousand eight hundred twenty (8,820) square feet total), landscaping, and improvements to construct one (1) new four (4) story building with twenty-eight thousand ninety (28,090) square feet of office area over six thousand four hundred eighty-one (6,481) square feet of ground-floor retail area, additional loading and mechanical spaces totaling one thousand seven hundred sixty-five (1,765) square feet, with one (1) level of underground storage and other building facilities, upper-level terraces, and a corner plaza (the "Project"). After taking into account subtraction of the floor area of the demolished buildings, the Project will result in a net increase in floor area of approximately twenty-seven thousand five hundred sixteen (27,516) square feet; and

E. WHEREAS, the Property has a General Plan Land Use Designation of Downtown Mixed-Use under City's 2030 General Plan (the "General Plan"), which was adopted on July 10, 2012 by Resolution No. 17710, and is located within the area subject to the Downtown Precise

Plan (the "Precise Plan") as last updated December 6, 2022 by Resolution No. _____. Under the Precise Plan, the Property is within "Area H," which allows development at up to four (4) stories, including up to 2.75 floor area ratio (FAR) office and ground-floor commercial; and

F. WHEREAS, on November 18, 2019, the City Council took several actions, including approval of a Planned Community Permit and Development Review Permit, to approve Owner's proposed project to redevelop the Property by demolishing the existing commercial buildings (eight thousand eight hundred twenty (8,820) square feet total) and constructing one (1) new four (4) story building with twenty-eight thousand ninety (28,090) square feet of office area over six thousand four hundred eighty-one (6,481) square feet of ground-floor retail area, and additional loading and mechanical spaces totaling one thousand seven hundred sixty-five (1,765) square feet. The approved project also included three (3) levels of underground parking containing seventy-one (71) parking spaces plus eleven (11) additional spaces for valet parking, which was to be integrated with the adjacent parking garage to be constructed on City Parking Lot 4 by that site's developer, The Robert Green Company. Subsequent to that project approval, Owner revised its proposed project to remove the on-site parking and to instead accommodate the project's parking needs in City parking facilities located in downtown, to be funded in part through the public benefit payments offered by Owner, which proposal the City Council considered at the time of its consideration of this Development Agreement; and

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

1. CEQA Categorical Exemption. The Project qualifies as categorically exempt under the California Environmental Quality Act ("CEQA"), Public Resources Code Sections 21000, *et seq*., pursuant to CEQA Guidelines Section 15332 ("In-Fill Development Projects"). The Project is an infill development that: is consistent with the General Plan and Precise Plan/Zoning designations; is on a site that is less than five (5) acres in size and contains no value as habitat for endangered, rare, or threatened species; would not result in any significant effects relating to traffic, noise, air quality, or water quality; and the site can adequately be served by all required utilities and public services.

2. Planned Community Permit. Following review and recommendation by the City's Zoning Administrator, and after a duly noticed public hearing, the City Council, on _____, 20__, approved an amended Planned Community Permit pursuant to Section 36.50.30 of the City Code by Resolution No. _____ (the "Planned Community Permit"), amending the Planned Community Permit previously approved by the City Council on November 18, 2019 by Resolution No. 18403.

3. Development Review Permit. Following review and recommendation by the Zoning Administrator, and after a duly noticed public hearing, the City Council, on _____, 20__, approved a Development Review Permit for the Project by Resolution

No. _____ (the "Development Review Permit"), amending the Development Review Permit previously approved by the City Council on November 18, 2019 by Resolution No. 18403.

4. Preliminary Parcel Map. Following review and recommendation by the Subdivision Committee, and after a duly noticed public hearing, the City Council on _____, 20____, approved a Preliminary Parcel Map for the removal of internal lot lines and street dedication by Resolution No. _____ (the "Preliminary Parcel Map").

5. Vacation of Portion of Public Street and Utility Easement. Following review after a duly noticed public hearing, the City Council on November 18, 2019, approved the summary vacation of a portion of a public street and utility easement located at 701 West Evelyn Avenue by Resolution No. 18405 (the "Public Easement Vacation").

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

H. WHEREAS, City is desirous of improving access to downtown through new parking facilities and/or other programs or improvements, especially given new State controls on how the City manages its downtown parking supply. City has determined that the Project complies with the plans and policies set forth in the General Plan and Precise Plan; and

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

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

K. WHEREAS, City will receive a public benefit fee in the amount of Ten Thousand Dollars ($10,000) to be paid to City by Owner within sixty (60) days of the receipt by Owner of a copy of this Development Agreement duly authorized and executed on behalf of City. Additional public benefits set forth in the Approvals and this Development Agreement are described in Section 3.1. Owner recognizes it is being afforded greater latitude concerning long-term assurances for development of the Project in exchange for agreeing to contribute greater public benefits than could otherwise be required as part of the requirements imposed for the Approvals and does so freely and with full knowledge and consent. City will further benefit from an increase in the likelihood that the public benefits which are reflected in the conditions to the Approvals will be

realized by City because this Development Agreement will increase the likelihood that the Project will be completed pursuant to the Approvals; and

L. WHEREAS, for the reasons stated herein, among others, City and Owner have determined that the Project is a development for which a development agreement is appropriate. This Development Agreement will, in turn, eliminate uncertainty in planning for and securing orderly development of the Project. City has also determined that the Project presents public benefits and opportunities and will strengthen City's downtown vibrancy and economic vitality by improving access through improvements to parking facilities or other access programs or improvements; generate revenues for City in the form of one-time and annual fees, taxes, and other fiscal benefits; promote high-quality design and development; enhance the use of transit; and otherwise achieve the goals and purposes for which the Development Agreement Legislation was adopted; and

M. WHEREAS, 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

N. WHEREAS, City has given notice of its intention to adopt this Development Agreement, conducted public hearings thereon pursuant to Government Code Section 65867, and the City Council hereby finds that: (1) the provisions of this Development Agreement and its purposes are consistent with the General Plan, the Precise Plan, Chapter 36 (Zoning) of the City Code (the "Zoning Ordinance"), and CEQA; (2) the Project and this Development Agreement are compatible with the uses authorized in, and the regulations prescribed for, the General Plan and Precise Plan land use districts in which the Property is located; (3) this Development Agreement complies in all respects with City's Ordinance No. 9.00, as adopted effective May 1, 2000 (the "Development Agreement Ordinance"); (4) this Development Agreement will not be detrimental to the health, safety, and general welfare of the community; (5) this Development Agreement will not adversely affect the orderly development of property or the preservation of property values; (6) this Development Agreement would facilitate the development of the Property in the manner proposed and is needed by the Owner due to the timing constraints on the redevelopment of the Property; (7) the proposed development should be encouraged in order to meet important economic, social, environmental, or planning goals of City; (8) Owner has made commitments to a high standard of quality; (9) this Development Agreement is in conformity with public convenience, general welfare, and good land use practice; and (10) this Development Agreement is advantageous to, and benefits, City; and

O. WHEREAS, following a duly noticed public hearing, this Development Agreement was approved by the City Council of City by Ordinance No. _____, which was introduced on _____, 20__ and finally adopted on _____, 20__ and became effective thirty (30) days thereafter, and was duly executed by the parties as of _____, 20__.

AGREEMENT

NOW, THEREFORE, City and Owner agree as follows:

ARTICLE I—PROPERTY AND TERM

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

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

1.3 **Expiration Date.** Except as otherwise provided in Section 6.3(b), the Term of this Development Agreement shall expire on the tenth (10th) anniversary of the Effective Date (the "Expiration Date").

1.4 **Life of Approvals.** Pursuant to Government Code Section 66452.6(a) and this Development Agreement, the life of the Existing Approvals, including, without limitation, the Preliminary Parcel Map relating to the Project, shall be automatically extended to and until the later of the following: (1) the expiration of the Term of this Agreement, as it may be earlier terminated or extended pursuant to the terms of this Agreement; or (2) the end of the term or life of any such Existing Approval otherwise allowed under applicable law.

ARTICLE II—DEVELOPMENT OF THE PROPERTY

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

2.2 **Right to Develop.** Owner shall have the vested right to develop the Project in accordance with and subject to: (a) the terms and conditions of this Development Agreement and the Approvals and any amendments to any of them as shall, from time to time, be approved pursuant to this Development Agreement; and (b) the Existing Standards (as defined in Section 2.5(b)). Nothing contained herein shall restrict City's discretion to approve, conditionally approve, or deny amendments or changes to the Approvals proposed by Owner. Except as is expressly provided otherwise in this Development Agreement, no future modifications of the following shall apply to the Project: (a) the General Plan or Precise Plan; (b) the City Code; (c) applicable laws and standards adopted by the City which purport to: (i) limit the use, subdivision, development density, design, or schedule of development of the Property or the

Project; or (ii) impose new dedications, improvements, other exactions, design features, or moratoria upon development, occupancy, or use of the Property or the Project; or (d) any other Existing Standards.

2.3 **Subsequent Approvals.** Certain subsequent land use approvals, entitlements, and permits other than the Existing Approvals will be necessary or desirable for implementation of the Project ("Subsequent Approvals"). The Subsequent Approvals may include, without limitation, the following: amendments of the Approvals, grading permits, building permits, sewer and water connection permits, Certificates of Occupancy, and any amendments to, or repealing of, any of the foregoing. The conditions, terms, restrictions, and requirements for such Subsequent Approvals shall be in accordance with the Existing Standards (except as otherwise provided in Sections 2.5(c) and 2.8) and shall not prevent development of the Property for the uses provided under the Approvals, the Existing Standards, and this Development Agreement ("Permitted Uses"), or reduce the density and intensity of development, or limit the rate or timing of development set forth in this Development Agreement, as long as Owner is not in default under this Development Agreement. Any subsequent discretionary action or discretionary approval initiated by Owner that is not otherwise permitted by or contemplated in the Approvals or which changes the uses, intensity, density, or building height or decreases the lot area, setbacks, parking, or other entitlements permitted on the Property shall be subject to the rules, regulations, ordinances, and official policies of the City then in effect, and City reserves full and complete discretion with respect to any findings to be made in connection therewith.

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

2.5 **Development Timing and Restrictions.**

(a) The parties acknowledge that Owner cannot at this time predict when, or the rate at which, the Project would be developed. Such decisions depend upon numerous factors which are not all within the control of Owner. It is the intent of City and Owner that, notwithstanding any future amendment to the General Plan, the Precise Plan, the Zoning Ordinance or any other ordinance, policy, plan, rule, or procedure of City or any other of the Existing Standards or the adoption of any ordinance, policy, plan, rule, or procedure (whether amended or adopted by means of an ordinance, City Charter amendment, initiative, resolution, policy, order, or moratorium, initiated or instituted for any reason whatsoever and adopted by the City Council, Planning Commission, Zoning Administrator, or any other board, commission, or department of the City or any officer or employee thereof, or by the electorate by referendum or initiative), Owner, subject to the terms of this Development Agreement, shall have the right to develop the Project in such order and at such rate and times as Owner deems appropriate

within the exercise of its sole and subjective business judgment. Such right is consistent with, and necessary to, the purpose and understanding of the parties to this Development Agreement, and that, without such a right, Owner's development of the Project would be subject to the uncertainties sought to be avoided by the Development Agreement Legislation and this Development Agreement.

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

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

(i) New City Standards that relate to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure imposed at any time, provided such New City Standards are uniformly applied on a Citywide or Precise Plan areawide basis to all substantially similar types of development projects and properties and such procedures are not inconsistent with procedures set forth in the Approvals or this Development Agreement;

(ii) Other New City Standards that are determined by City to be reasonably required in order to protect occupants of the Project, and/or residents of City, from a condition dangerous to their health or safety, or both, as further described in Section 6.5;

(iii) Other New City Standards that do not conflict with the Existing Standards, this Development Agreement or the Approvals, provided such New City Standards are uniformly applied on a Citywide or downtown planning areawide basis to all substantially similar types of development projects and properties. A New City Standard conflicts only if it purports to: (a) limit or reduce the density or intensity of the Project or otherwise require any material reduction in the square footage of a building or any improvements from that permitted under this Development Agreement or the Approvals; (b) limit or reduce the height or bulk of individual proposed buildings or other improvements that are part of the Project from that permitted under this Development Agreement; (c) reduce or relocate the allowed location of vehicular access or

parking from that described in the Approvals; (d) prohibit any category, quantity, or degree of Project land uses from those permitted under this Development Agreement or the Approvals; (e) limit the location of building sites, grading, or other improvements on the Property in a manner that is inconsistent with the Approvals; (f) limit or control the ability to obtain public utilities, services, infrastructure, or facilities; or (g) impose requirements for reservation or dedication of land for public purposes other than as provided in or contemplated by the Approvals, the Existing Standards or this Development Agreement. Without limiting the generality of the foregoing, and notwithstanding any other provision herein, Owner acknowledges that City plans to consider New City Standards related to reducing light pollution in the local environment, and in response to any New City Standards with respect thereto, Owner agrees to prepare a light pollution reduction plan for the Project that will include practices to curtail obtrusive light, while managing energy consumption, disruption of ecosystem and wildlife, human health and security, provided that: (1) any such modified or new light pollution requirements are otherwise applicable to the type of development proposed for the Project; and (2) Owner has not already submitted to City a building permit application or other similar City permit application for the applicable improvements; and

(iv) Other New City Standards that do not apply to the Property and/or the Project due to the limitations set forth above but only to the extent that such New City Standards are agreed to in writing by Owner in its sole discretion.

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

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

Agreement or payment of the Parking Facilities Contribution) shall be tolled for the duration of any Owner project changes, compliance actions, or legal challenges reasonably related to any such laws or regulations, provided that Owner shall diligently pursue such project changes, actions or challenges, and the tolling period shall in no event exceed one (1) year. Any tolling period shall not affect the term of this Agreement.

2.6 **Development Fees, Assessments, Exactions, and Dedications.** Owner shall pay all applicable City fees, including processing fees, impact fees, and water and sewer connection and capacity charges and fees; assessments; dedication formulae; and taxes payable in connection with the development, build-out, occupancy, and use of the Project generally applicable to developments of substantially similar type Citywide or in the Downtown Precise Plan area; all at the rates in effect at the time Owner applies for a building permit in connection with the Project (regardless of whether such fees, assessments, dedication formulae, or taxes became effective before, on, or after the Effective Date), with the following exceptions:

(a) For the first five (5) years of the Term of this Development Agreement ("Fee Lock Period"), Owner shall only pay those development impact fees and exactions which are in effect as of the Effective Date at the rates in effect at the time of payment. Following the expiration of the Fee Lock Period, Owner shall be subject to all applicable development impact fees and exactions, including those that were newly established, updated, or increased after the Effective Date. If City updates and increases a development impact fee in effect as of the Effective Date based on a new nexus study such that the increased amount exceeds the preexisting fee (with annual automatic escalation) during the Fee Lock Period only, Owner shall pay the new updated fee, but the amount paid shall be capped at the amount that would have been payable under the preexisting fee. If any building permit lapses after issuance and the permit can be renewed or reissued under the City Code, the fees in effect at the time of renewal or reissuance shall apply.

(b) Owner shall receive a credit for parking in-lieu fees required and payable pursuant to the Downtown Precise Plan and Section 65863.2(f) of the Government Code for accessible parking and electric vehicle parking, up to and not to exceed the amount of the Parking Improvements Contribution in Section 3.1(b) paid by Owner.

2.7 **Conditions of Approval.** If Owner constructs the Project, Owner shall satisfy and comply with all Conditions of Approval for the Project, which are incorporated in this Development Agreement by reference. Owner's obligations under this Section 2.7 shall survive the expiration or earlier termination of this Development Agreement.

2.8 **Applicable Codes.** Unless otherwise expressly provided in this Development Agreement, the Project shall be constructed in accordance with the provisions of the California Building Code, California Fire Code, and California Energy Code, including local amendments as adopted by the City of Mountain View, City standard construction specifications, in effect at the time of approval of the appropriate building, grading, or other construction permits for the Project.

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

ARTICLE III—PUBLIC BENEFITS

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

(a) Public Benefit Fee. Owner shall pay a public benefit fee in the amount of Ten Thousand Dollars ($10,000) (the "Public Benefit Fee") to City within sixty (60) days of the receipt by Owner of a copy of this Development Agreement authorized and executed on behalf of City. If Owner fails to pay such Public Benefit Fee, this Development Agreement will automatically terminate, which shall be the sole remedy of City with respect to such failure. The Public Benefit Fee shall be retained by City regardless of whether Owner opts to proceed with development of the Project.

(b) Contribution to Downtown Parking Facility or Other Downtown Improvements. Owner shall contribute and make payment to City in the amount of Seven Million Nine Hundred Ninety Thousand Dollars ($7,990,000), subject to adjustment as hereinafter set forth ("Parking Improvements Contribution"), to defray City's costs to design, plan, study, and construct a parking facility or facilities in the Downtown Precise Plan area, to implement a parking management plan for the area, or to fund other improvements or programs that improve access to downtown ("Other Downtown Improvements"). The Parking Improvements Contribution shall be subject to annual escalation during the Term on each anniversary of the Effective Date based on increases in the ENR Index. "ENR Index" means the Construction Cost Index for San Francisco, as published from time to time by the Engineering News Record.

(i) Owner shall provide the Parking Improvements Contribution to City within twenty-four (24) months after the Effective Date of this Development Agreement ("Contribution Date") or upon the Owner receiving a Certificate of Occupancy for the Project, whichever occurs earliest; provided that the Parking Agreement has been executed and is in effect as set forth in Section 4.3 herein. If the Parking Agreement is executed after the Contribution Date and/or receipt of the Certificate of Occupancy, Owner shall provide the Parking Improvements Contribution to City concurrently with execution of the Parking Agreement ("Delayed

Contribution Date"). Unless this paragraph is expressly amended in a signed agreement of the parties, Owner's nonpayment or advance written notice of nonpayment of the Parking Improvements Contribution on or before the Contribution Date or receipt of the Certificate of Occupancy, whichever occurs earlier, or the Delayed Contribution Date if applicable, for any reason, including the parties' failure to execute the Parking Agreement, shall automatically terminate this Development Agreement and all outstanding mutual obligations of the parties under this Development Agreement and the Parking Agreement without additional notice of such termination. An agreement to modify the Contribution Date may be effectuated by written operating memoranda executed by the parties; the City Manager is authorized to execute said memoranda on behalf of City.

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

(c) Tax Point of Sale Designation. Owner shall use good-faith efforts to the extent allowed by applicable law to require all persons providing bulk lumber, concrete, structural steel, and prefabricated building components, such as roof trusses, to be used in connection with 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 applicable portion of the Property as the place of use of material used in construction of the Project in order to have the local portion of the sales and use tax distributed directly to City instead of through the Countywide pool. Unless Owner demonstrates to City that such information is not reasonably obtainable, then Owner shall on an annual basis provide City with such information as shall be reasonably requested by City regarding subcontractors working on the Project with contracts in excess of the amount set forth above, including a description of all applicable work and the dollar value of such subcontracts. City may use such information to contact each subcontractor who may qualify for local allocation of sales and use taxes to City. To facilitate implementation of these tax point of sale designation requirements, Owner shall include in the contract with its general contractor for the construction of building core and/or shell work the following contract provision:

> "Contractor shall, to the extent allowed by the California Department of Tax and Fee Administration and applicable sales and use tax laws and regulations ("**Sales and Use Tax Laws**"), coordinate with the City of Mountain View to designate the City of Mountain View as the place of use of any materials, goods, or services, purchased by Contractor and the origin of any local sales taxes generated by Contractor and its subcontractors; provided, however, in no event shall Contractor be required to do anything that is in violation of or inconsistent with such Sales and Use Tax Laws."

(d) Mural on Southern Wall. If the pending hotel development on the adjacent property commonly known as City Parking Lot 4 does not move forward (i.e., the planning entitlement expires and will not be timely reentitled), such that the south-facing wall of the Project will be visible from the public right-of-way, Owner shall, at City's request, incorporate a mural on that wall prior to issuance of the Certificate of Occupancy for the Project.

ARTICLE IV—OBLIGATIONS OF THE PARTIES

4.1 **Owner.**

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

4.2 **City.**

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

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

4.3 **Subsequent Parking Agreement.** Prior to the expiration of the eighteenth (18th) month of the Term or issuance of the first building permit for the Project, whichever is earlier, the parties shall enter into a separate agreement related to Owner's rights to acquire parking permits under City's downtown parking program (the "Parking Agreement"), which shall include, at a minimum, the terms enumerated in this Section 4.3. The terms of this Development Agreement shall control in the event of conflicting terms in the Parking Agreement. The parties may agree to extend the time to complete the Parking Agreement by written operating memoranda, which shall become part of this Development Agreement and which the City Manager is authorized to execute on behalf of City.

(a) As consideration for Owner's Parking Improvements Contribution and other covenants and conditions of this Development Agreement, City shall grant Owner the right to

acquire up to sixty-five (65) four-wheel automobile parking permits for parking spots provided by the City's downtown permit parking program in City parking facilities. For the first ten (10) years of the Parking Agreement term, these parking permits shall be at no cost to Owner. After the initial ten (10) year period, for the remaining term of the Parking Agreement, Owner shall pay a discounted price of twenty-five percent (25%) off the otherwise applicable price under the City's downtown permit parking program at the time of purchase.

(b) If Owner is eligible for and desires to acquire more than sixty-five (65) parking permits under the City permit parking program, the additional permits shall not be discounted, and Owner shall purchase such permits at the applicable price under City's Downtown Parking Permit Program at the time of purchase.

(c) Owner shall be responsible for communicating these terms to Owner's tenants and their employees and for managing disputes between employees and tenants about who is eligible for discounted and available permits.

(d) The Parking Agreement will have a term of thirty (30) years.

(e) During the Term, the parties may periodically consider renegotiation of the Parking Agreement based on performance of the Project's transportation demand management (TDM) program and measures, changes to the permit parking program, and other unforeseen circumstances.

ARTICLE V—DEFAULT, REMEDIES, TERMINATION

5.1 **Remedies.** City and Owner acknowledge that the purpose of this Development Agreement is to carry out the parties' objectives and local, regional, and Statewide objectives by developing the Project. The parties acknowledge that the parties would not have entered into this Development Agreement had it been exposed to damage claims for any breach thereof. As such, the parties agree that in no event shall the parties be entitled to recover any actual, consequential, punitive, or other monetary damages against either party for breach of this Development Agreement. Therefore, City and Owner agree that, in the event of a breach of this Development Agreement, each of the parties hereto may pursue the following: (a) specific performance; (b) suits for declaratory or injunctive relief; (c) suits for mandamus or special writs; or (d) cancellation of this Development Agreement. In addition to the foregoing remedies, City shall be entitled to recover monetary damages with respect to monetary amounts payable by Owner under this Development Agreement, provided City is not in default under this Development Agreement or the Parking Agreement. In no event may City be entitled to recover monetary damages if Owner elects termination of this Development Agreement by nonpayment of the Parking Improvements Contribution on or before the Contribution Date, as set forth in Section 3.1(b)(i). All of the above remedies shall be cumulative and not exclusive of one another, and the exercise of any one (1) or more of these remedies shall not constitute a waiver or election with respect to any other available remedy.

5.2 **Notice of Breach.**

(a) Prior to the initiation of any action for relief specified in Section 5.1 above because of an alleged breach of this Development Agreement, the party claiming breach shall deliver to the other party a written notice of breach (a "Notice of Breach"). The Notice of Breach shall specify with reasonable particularity the reasons for the allegation of breach and the manner in which the alleged breach may be satisfactorily cured.

(b) The breaching party shall cure the breach within thirty (30) days following receipt of the Notice of Breach; provided, however, if the nature of the alleged breach is nonmonetary and such that it cannot reasonably be cured within such thirty (30) day period, then the commencement of the cure within such time period and the diligent prosecution to completion of the cure thereafter at the earliest practicable date shall be deemed to be a cure, provided that if the cure is not so diligently prosecuted to completion, then no additional cure period shall be required to be provided. If the alleged failure is cured within the time provided above, then no default shall exist, and the noticing party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a default shall exist under this Development Agreement and the nondefaulting party may exercise any of the remedies available under this Development Agreement.

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

5.3 **Applicable Law.** This Development Agreement shall be construed and enforced in accordance with the laws of the State of California without reference to its choice of laws rules.

5.4 **Attorney's Fees.** In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Development Agreement, the prevailing party is entitled to reasonable attorney's fees and any related costs incurred in that proceeding in addition to any other relief to which it is entitled.

ARTICLE VI—ANNUAL REVIEW, PERMITTED DELAYS, AND AMENDMENTS

6.1 **Annual Review.** The annual review required by California Government Code Section 65865.1 shall be conducted pursuant to City Code Section 36.54.30 by the Community Development Director every twelve (12) months from the Effective Date for compliance with the provisions hereof. The Community Development Director shall notify Owner in writing of any evidence which the Community Development Director deems reasonably required from Owner in order to demonstrate good-faith compliance with the terms of this Development Agreement. Such annual review provision supplements, and does not replace, the provisions of Section 5.2 above whereby either City or Owner may, at any time, assert matters which either party believes

have not been undertaken in accordance with this Development Agreement by delivering a written Notice of Breach and following the procedures set forth in said Section 5.2. Owner shall pay City's actual costs for its performance of the Annual Review, including staff time if and to the extent that more than two (2) hours of staff time is required to perform the annual review.

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

6.3 **Permitted Delays.**

(a) Force Majeure. Subject to the limitations set forth below, the time within which either party shall be required to perform any act under this Development Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the party seeking the delay by strikes, lockouts, and other labor difficulties; Acts of God; unusually severe weather, but only to the extent that such weather or its effects (including, without limitation, dry-out time) result in delays that cumulatively exceed twenty (20) days for any winter season occurring after commencement of construction of the Project; failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body; changes in local, State, or Federal laws or regulations; any development moratorium or any action of other public agencies that regulate land use, development, or the provision of services that prevents, prohibits, or delays construction of the Project; enemy action; civil disturbances; wars; terrorist acts; fire; unavoidable casualties; or mediation, arbitration, litigation, or other administrative or judicial proceeding involving the Existing Approvals or this Agreement (each a "Force Majeure Delay"), provided that, except as otherwise provided in Section 6.3(b) below, the Term shall not be extended by reason of any Force Majeure Delay. An extension of time for any such cause shall be for the period of the Force Majeure Delay and shall commence to run from the time of the commencement of the cause, if notice (as defined in Section 10.3) by the party claiming such extension is sent to the other party within sixty (60) days of the commencement of the cause. If notice is sent after such sixty (60) day period, then the extension shall commence to run no sooner than sixty (60) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City Manager and Owner. Owner's inability or failure to obtain financing shall not be deemed to be a cause outside the reasonable control of the Owner and shall not be the basis for a Force Majeure Delay.

(b) Extension of Term Due to Moratoria. In the event of any publicly declared moratorium or other interruption in the issuance of permits, approvals, agreements to provide utilities or services or other rights or entitlements by any State, local, or Federal governmental agency, or public utility which could postpone the construction of improvements at the Project, the Term of this Development Agreement shall be extended without further act of the parties by

a period equal to the duration of any such moratorium or interruption; provided, however, the total Term extension under this Section 6.3(b) shall not exceed a total of two (2) years. Nothing in this Section is intended, however, to confer on City or any related agency any right to impose any such moratorium or interruption.

6.4 **Certain Waivers.** City shall have the right to waive or reduce the burden of provisions of the Approvals as they apply to any portion of the Property, with the consent of Owner of such portion, so long as: (a) the waiver, reduction, or revision does not conflict with the land uses or improvements that are the subject of the Approvals (or any permit or approval granted thereunder); (b) such reduction or waiver does not increase the burden imposed upon a portion of the Property owned by any other owner; (c) the waiver, reduction, or revision is not inconsistent with the purpose and goals of the General Plan or Precise Plan; and (d) such waiver or reduction is made with the written consent of the Owner of the portion of the Project as to which such waiver or reduction is granted.

6.5 **Life Safety and Related Matters.** As provided in Section 2.9, nothing contained herein shall be deemed to prevent adoption and application to improvements upon the Property of laws, ordinances, uniform codes, rules, or regulations pertaining to or imposing life-safety, fire protection, environmental, energy or resource efficiency, mechanical, electrical, and/or building integrity requirements at the time permits for construction of such improvements are issued. This Section 6.5 is not intended to be used for purposes of general welfare or to limit the intensity of development or use of the Property but to protect and recognize the authority of the City to deal with material endangerments to persons on the Property not adequately addressed in the Approvals.

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

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

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

6.9 **Minor Amendments.**

(a) The parties acknowledge that the provisions of this Development Agreement require a close degree of cooperation between City and Owner, and, during the course of implementing this Development Agreement and developing the Project, refinements and clarifications of this Development Agreement may become appropriate and desired with respect to the details of performance of City and Owner. If, and when, from time to time, during the Term of this Development Agreement, City and Owner agree that such a refinement is necessary or appropriate, City and Owner shall effectuate such refinement through a minor amendment or operating memorandum (the "Operating Memorandum") approved in writing by City and Owner, which, after execution, shall be attached hereto as an addendum and become a part hereof. Any Operating Memorandum may be further refined from time to time as necessary with future approval by City and Owner. No Operating Memorandum shall constitute an amendment to this Development Agreement requiring public notice or hearing.

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

6.10 **Amendment of Approvals.** Approval of any major modifications to the Project or Approvals requires City Council approval and the approval of Owner. Any of the following amendments to Approvals shall be deemed a "major modification" and shall require an amendment of this Development Agreement: (a) the term of the Development Agreement as provided in Section 1.2; (b) the right to develop, and Permitted Uses of, the Property as provided

in this Development Agreement; (c) the general location of on-site and off-site improvements; (d) the density or intensity of use of the Project; (e) the maximum height or size of proposed buildings; or (f) monetary contributions by Owner as provided in this Development Agreement. Such amendment shall be limited to those provisions of this Development Agreement, which are implicated by the amendment of the Approvals. Any other amendment of the Approvals shall not require amendment of this Development Agreement unless the amendment of the Approvals relates specifically to some provision of this Development Agreement.

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

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

ARTICLE VII—COOPERATION AND IMPLEMENTATION

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

7.2 **City Processing.**

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

Agreement and development of the Project in accordance herewith, including, without limitation, in performing the following functions to process the Project:

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

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

(iii) Delivering formal written response to Owner within thirty (30) days of any application, submission, or amended submission for Approvals; and

(iv) Delivering formal written response within thirty (30) days of Owner's good-faith written request for clarification and the City's interpretation of any provision of this Development Agreement.

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

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

ARTICLE VIII—TRANSFERS AND ASSIGNMENTS

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

the assignee shall be deemed to be the "Owner," with all rights and obligations related thereto, with respect to such conveyed property. Transfers and conveyances to third-parties of not less than an aggregate one hundred percent (100%) of Owner's ownership by way of stock, membership interest, partnership interest, or similar equity shall be deemed an assignment by Owner and assumption of this Development Agreement by the resulting owners.

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

ARTICLE IX—MORTGAGE PROTECTION; CERTAIN RIGHTS OF CURE

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

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

improvements than the Project, although this Development Agreement shall not be construed to obligate City to approve such applications, and City retains full and complete discretion with respect to consideration of any such applications for approval.

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

ARTICLE X—GENERAL PROVISIONS

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

10.2 **Intentionally Omitted.**

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

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

With a copy to: Office of the City Attorney
Attn: City Attorney
City of Mountain View
500 Castro Street—P.O. Box 7540
Mountain View, CA 94039-7540

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

Owner: C-M Evelyn Station, LLC
Attn: Vincent Woo
883 North Shoreline Boulevard, Suite B100
Mountain View, CA 94043

With a copy to: C/O Sblend Sblendorio
Hoge, Fenton, Jones, Appel, Inc.
6801 Koll Center Parkway, Suite 210
Pleasanton, CA 94566

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

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

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

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

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

Exhibit A Legal Description
Exhibit B Property Diagram
Exhibit C Schedule of Exactions and Impact Fees
Exhibit D Form of Assignment and Assumption Agreement

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

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

10.10 **Indemnification and Hold Harmless.** Owner shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City and its elected and appointed officials, officers, employees, contractors, agents, and representatives (individually, a "City Party," and, collectively, "City Parties") from and against any and all liabilities, obligations, orders, claims, damages, fines, penalties and expenses, including reasonable attorneys' fees and costs (collectively, "Claims"), including Claims for any bodily injury, death, or property damage, resulting directly or indirectly from the Owner's development, construction, or operation of the Project and, if applicable, proximately arising from Owner's failure to comply with the terms of this Development Agreement, and/or from any other acts or omissions of Owner under this Development Agreement, whether such acts or omissions are by Owner or any of Owner's contractors, subcontractors, agents, or employees; provided that Owner's obligation to indemnify and hold harmless (but not Owner's duty to defend) shall be limited (and shall not apply) to the extent such Claims are found to arise from the gross negligence or willful misconduct of a City Party. This Section 10.10 includes any and all present and future Claims arising out of or in any way connected with Owner's or its contractors' obligations to comply with any applicable State Labor Code requirements and implementing regulations of the Department of Industrial Relations pertaining to "public works" (collectively, "Prevailing Wage Laws"), including all claims that may be made by contractors, subcontractors, or other third-party

claimants pursuant to Labor Code Sections 1726 and 1781. Owner's obligations under this Section 10.10 shall survive expiration or earlier termination of this Development Agreement.

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

(a) City and Owner shall cooperate in the defense of any claim, action, or court proceeding instituted by a third party or other governmental entity or official seeking to attack, set aside, void, annul, or otherwise challenge City's consideration and/or approval of this Development Agreement or the Approvals or challenging the validity of any provision of this Development Agreement or the Approvals ("Litigation Challenge"), and the parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information. Owner shall take the lead role defending such Litigation Challenge and may elect to be represented by the legal counsel of its choice, subject to City's right to approve counsel, with the costs of such representation, including Owner's administrative, legal, and court costs, paid solely by Owner. City may elect to retain separate counsel to monitor Owner's defense of the Litigation Challenge at Owner's expense. The parties shall affirmatively cooperate in defending the Litigation Challenge and shall execute a joint defense and confidentiality agreement in order to share and protect information under the joint defense privilege recognized under applicable law.

Owner shall indemnify, defend, release and hold harmless City Parties from and against any damages, attorneys' fees, or cost awards, including attorneys' fees awarded under Code of Civil Procedure Section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation, and any costs, expenses, reasonable attorneys' fees, or expert witness fees that may be asserted or incurred by the City Parties, including, but not limited to, those arising out of or in connection with approval of this Development Agreement or the Approvals. Any proposed settlement of a Litigation Challenge shall be subject to City's and Owner's approval not to be unreasonably withheld, conditioned, or delayed. If the terms of the proposed settlement would constitute an amendment or modification of this Development Agreement or any Approvals, the settlement shall not become effective unless such amendment or modification is approved by City and Owner in accordance with applicable law, and City reserves its full legislative discretion with respect to any such City approval. If Owner elects not to contest or defend such Litigation Challenge, City shall have no obligation to do so, but Owner shall be liable for any costs or awards that may arise from resolving the Litigation Challenge in favor of the party bringing the Litigation Challenge, including, but not limited to, costs City incurs to void approval of this Development Agreement or the Approvals or take other action as resolution of the Litigation Challenge may direct. Owner shall reimburse City for its costs incurred in connection with the Litigation Challenge within thirty (30) days following City's written demand therefor, which may be made from time to time during the course of such litigation. Owner's obligations under this Section 10.11 shall survive expiration or earlier termination of this Development Agreement.

10.12 **Intentionally Omitted.**

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

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

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

(a) City is a California charter city and municipal corporation and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Development Agreement.

(b) The execution and delivery of this Development Agreement and the performance of the obligations of City hereunder have been duly authorized by all necessary City Council action, and all necessary City approvals have been obtained.

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

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

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

(a) Owner is duly organized and validly existing under the laws of the State of California, is in good standing, and has all necessary powers under the laws of the State of California to own property interests and in all other respects enter into and perform the undertakings and obligations of Owner under this Development Agreement.

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

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

(d) Owner has not: (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Owner's creditors; (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Owner's assets; (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Owner's assets; or (v) admitted in writing its inability to pay its debts as they come due.

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

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

10.18 **Waivers.** Notwithstanding any other provision in this Development Agreement, any failures or delays by any party in asserting any of its rights and remedies under this Development Agreement shall not operate as a waiver of any such rights or remedies or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies. A party may specifically and expressly waive in writing any condition or breach of this Development Agreement by the other party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one party to any act or failure to act by the other party shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or similar acts or failures to act in the future.

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

10.20 **Venue.** Any legal action regarding this Development Agreement shall be brought in the Superior Court for Santa Clara County, California, except for actions that include claims in which the Federal District Court for the Northern District of the State of California has original jurisdiction, in which case the Northern District of the State of California shall be the proper venue.

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

10.22 **Construction of Agreement.** All parties have been represented by counsel in the preparation and negotiation of this Development Agreement, and this Development Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Development Agreement. Unless the context clearly requires otherwise: (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; (e) "includes" and "including" are not limiting; and (f) "days" means calendar days unless specifically provided otherwise.

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

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

By: _____
Kimbra McCarthy, City Manager

Attest: _____
Heather Glaser, City Clerk

APPROVED AS TO CONTENT:

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

FINANCIAL APPROVAL:

Name: _____
Finance and Administrative Services Director

APPROVED AS TO FORM:

Name: _____
Title: _____
City Attorney

"Owner":
C-M EVELYN STATION, LLC,
a California limited liability company

By: _____

Name: Vincent Woo

Title: Authorized Signatory

_____
Taxpayer I.D. Number

EXHIBIT A

LEGAL DESCRIPTION

(See Attached)

EXHIBIT "A"

Legal Description

For APN/Parcel ID(s): 158-20-066 and 158-20-015

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MOUNTAIN VIEW, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

TRACT ONE:

COMMENCING AT A POINT IN THE NORTHWESTERLY LINE OF HOPE STREET AT THE MOST SOUTHERLY CORNER OF PARCEL 2 AS CONVEYED BY SAM RUIZ AND CARMEN RUIZ, HIS WIFE, BY DEED DATED MAY 10, 1957 AND RECORDED MAY 22, 1957 IN BOOK 3804 OF OFFICIAL RECORDS AT PAGE 133, SANTA CLARA COUNTY RECORDS; THENCE ALONG SAID NORTHWESTERLY LINE NORTH 26° 44' 43" EAST A DISTANCE OF 115.00 FEET TO THE TRUE POINT OF BEGINNING OF THE PARCEL HEREINAFTER DESCRIBED; THENCE CONTINUING ALONG SAID NORTHWESTERLY LINE NORTH 26° 44' 43" EAST A DISTANCE OF 60.00 FEET TO THE NORTHEASTERLY CORNER OF LOT 10, AS SAID LOT IS SHOWN UPON THE MAP OF TOWN OF NEW MOUNTAIN VIEW RECORDED MARCH 23, 1896 IN BOOK I OF MAPS AT PAGES 6 AND 7, SANTA CLARA COUNTY RECORDS, SAID CORNER BEING ALSO THE POINT OF INTERSECTION OF THE SOUTHWESTERLY LINE OF EVELYN STREET (FORMERLY FRONT STREET) AND THE NORTHWESTERLY LINE OF HOPE STREET; THENCE ALONG THE SOUTHWESTERLY LINE OF EVELYN STREET, NORTH 63° 13' 34" WEST A DISTANCE OF 74.99 FEET TO THE NORTHWESTERLY CORNER OF LOT 10, AS SHOWN ON THE MAP HEREINABOVE REFERRED TO; THENCE ALONG THE WESTERLY LINE OF SAID LOT 10, SOUTH 26° 44' 27" WEST, A DISTANCE OF 60.01 FEET; THENCE SOUTH 63° 13' 58" EAST A DISTANCE OF 74.99 FEET TO THE POINT OF BEGINNING.

APN: 158-20-066

TRACT TWO:

BEGINNING ON THE SOUTHERLY CORNER OF LOT 9, BLOCK 1 SOUTH, RANGE 1 EAST, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "TOWN OF NEW MOUNTAIN VIEW", RECORDED IN BOOK 1 OF MAPS, AT PAGES 6 AND 7, ON MARCH 23, 1896.

THENCE NORTH 26° 00' 00" EAST, 40.00 FEET TO THE TRUE POINT OF BEGINNING.

THENCE NORTH 26° 00' 00" EAST 60.00 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF EVELYN AVENUE (FORMERLY FRONT STREET) AS SHOWN IN SAID BOOK "TOWN OF NEW MOUNTAIN VIEW"; THENCE NORTH 63° 57' 30" WEST, 107 FEET ALONG THE SOUTHERLY BOUNDARY OF EVELYN AVENUE;

THENCE SOUTH 26° 00' 00" WEST, 80.03 FEET;

THENCE SOUTH 63° 57' 30" EAST, 69.98 FEET;

THENCE NORTH 26° 00' 00" EAST, 20.03 FEET;

THENCE SOUTH 63° 57' 30" EAST, 37.02 FEET TO THE TRUE POINT OF BEGINNING.

APN: 158-20-015

EXHIBIT B

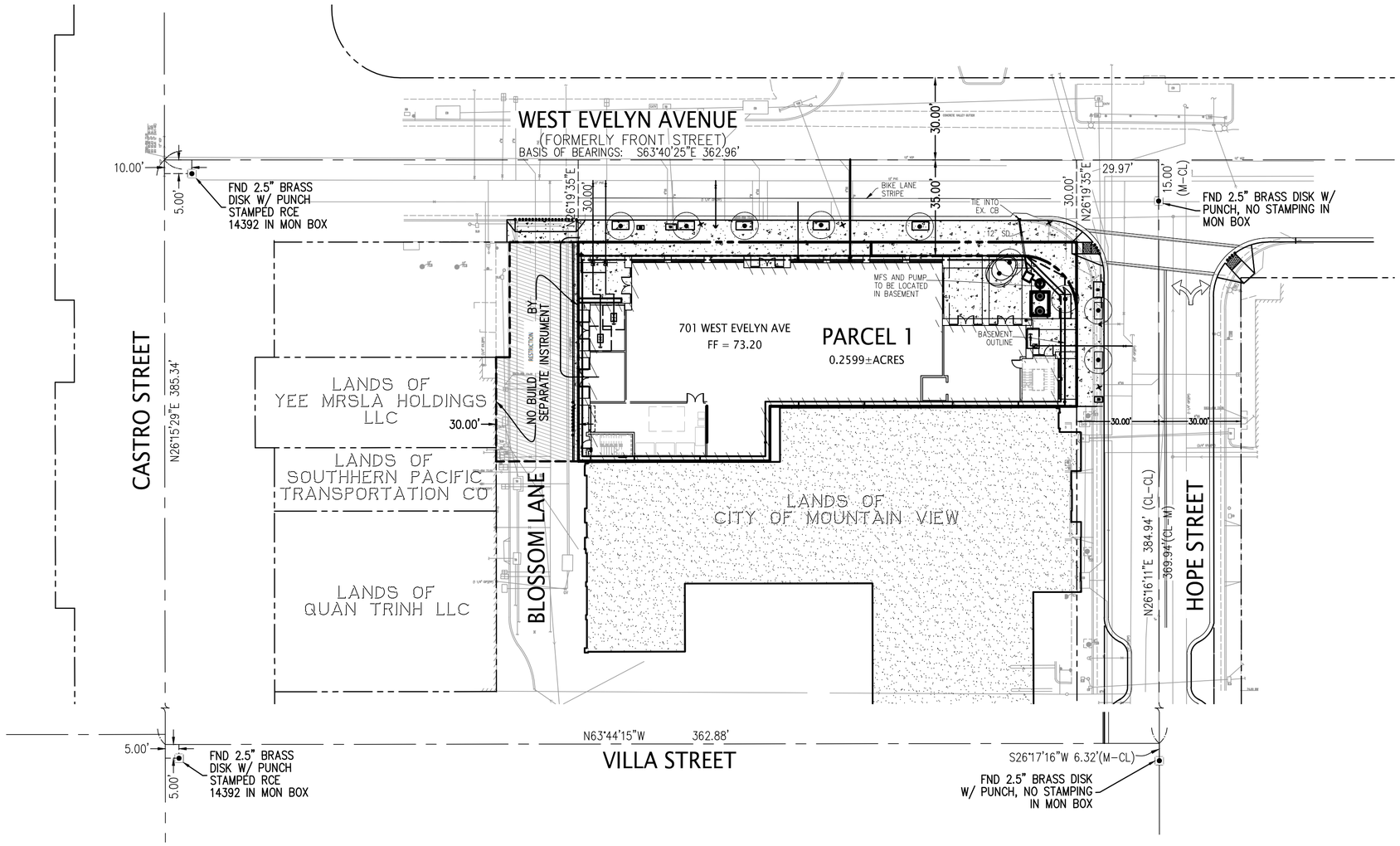
PROPERTY DIAGRAM

(See Attached)

PRELIMINARY PARCEL MAP

FOR A ONE LOT SUBDIVISION
CITY OF MOUNTAIN VIEW
COUNTY OF SANTA CLARA, STATE OF CALIFORNIA
SEPTEMBER, 2022

KIER & WRIGHT
CIVIL ENGINEERS & SURVEYORS, INC.
3350 Scott Boulevard, Building 22 Phone (408) 727-6665
Santa Clara, California 95054 Fax (408) 727-5641
www.kierwright.com



LEGEND

- PROPERTY LINE
- EXISTING RIGHT OF WAY LINE
- NEW RIGHT OF WAY LINE
- ADJACENT LOT LINE
- TIE LINE
- EASEMENT LINE
- MONUMENT/MONUMENT LINE
- LOT LINE TO BE REMOVED
- CENTERLINE
- UNDERGROUND GARAGE OUTLINE
- PROPOSED STORM DRAIN LINE
- MEDIA FILTRATION STRUCTURE

ABBREVIATIONS

(CL-CL)	CENTERLINE TO CENTERLINE
(CL-M)	CENTERLINE TO MONUMENT
DOC.	DOCUMENT
FND	FOUND
(M-CL)	MONUMENT TO CENTERLINE
NO.	NUMBER
O.R.	OFFICIAL RECORD
SF	SQUARE FEET
W/	WITH

REFERENCE

① PARCEL MAP	(459 M 50)
② RECORD OF SURVEY	(627 M 35-37)
③ PARCEL MAP	(763 M 28-29)
④ GRANT DEED	(Doc. No. 23483291)
⑤ GRANT DEED	(Doc. No. 23064815)

NORTH

0 15' 30' 60' 90'

Scale 1" = 30'

PROPOSED CONDITIONS

JOB NO.: A15103-5 SHEET 2 OF 3

EXHIBIT C

SCHEDULE OF IMPACT FEES

(See Attached)

EXHIBIT C
SCHEDULE OF IMPACT FEES

The following impact fees are based on the City's adopted Fiscal Year 2023-24 budget (effective July 1, 2023). Rates are shown as of the Effective Date and are adjusted annually in accordance with the applicable fee ordinance or resolution.

A fee's annual escalation shall be increased by one of the following factors in the current year (or if not available, the prior year): (a) CPI – Consumer Price Index, or (b) CCI - San Francisco Engineering News-Record Construction Cost Index. *(Note, "SF" = square feet.)*

A. Nonresidential Housing Impact Fee (escalation per CPI – Code §36.40.65(b)(2)).

1. **Office:** $16.00/net new SF for first 10,000 SF; $33.00/net new SF above 10,000 SF.
2. **Ground Floor Retail:** $2.00/net new SF for first 25,000 SF; $3.50/net new SF above 25,000 SF.

B. Citywide Transportation Impact Fee (escalation per CCI – Code §43.5(a))**.**

1. **Office:** $6.53/net new SF.
2. **Ground Floor Retail:** $6.53/net new SF.

C. Water Capacity Fee (escalation per CCI – Code §35.41)**.**

Office and Ground Floor Retail (based on each water meter size, including irrigation meter):

Meter Size	Unit Cost (Per Meter)
¾" Meter:	**$8,356**
1" Meter:	**$13,927**
1-1/2" Meter:	**$27,851**
2" Meter:	**$44,562**
3" Meter:	**$84,832**
Greater than 3"	**$22.281 per gallons/day estimated water demand**

D. Sewer Capacity Fee (escalation per CCI – Code §35.41).

1. **Office:** $2,970/1,000 net new SF.
2. **Ground Floor Retail:**
    a. Commercial/Retail: $2,028/1,000 net new SF.
    b. Restaurant: $17,085/1,000 net new SF.

E. Downtown Parking In-lieu Fee (escalation per CCI per City Council Resolution No. 18082).

$64,472 per required parking space

EXHIBIT D

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

[To Be Inserted]