ORDINANCE NO. 1095

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK FOR APPROVAL OF THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MENLO PARK AND PENINSULA INNOVATION PARTNERS, LLC FOR THE WILLOW VILLAGE PROJECT

The City Council of the City of Menlo Park does ordain as follows:

SECTION 1.
This Ordinance is adopted under the authority of Government Code Section 65864 et seq. and pursuant to the provisions of City Resolution No. 4159, which establishes procedures and requirements for the consideration of developments within the City of Menlo Park ("City"). This Ordinance incorporates by reference that certain Development Agreement for the Willow Village Project (the "Development Agreement") by and between the City and Peninsula Innovation Partners, LLC ("Applicant") attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 2.
The City, as lead agency, prepared an Environmental Impact Report ("EIR") pursuant to the California Environmental Quality Act ("CEQA") that examined the environmental impacts of the redevelopment of the approximately 59-acre industrial site (the "Main Project Site") plus three parcels (within two sites) west of Willow Road (the "Hamilton Parcels" and collectively, with the Main Project Site, the "Project Site"). On December 6, 2022, by Resolution No. 6790, the City Council certified the EIR, made certain findings, and adopted a Mitigation Monitoring and Reporting Plan, which Resolution together with the EIR are incorporated herein by reference. The City Council finds that the Development Agreement is within the scope of the EIR.

SECTION 3.
As required by Resolution No. 4159, the Planning Commission reviewed the Development Agreement at a duly and properly noticed public hearing held on October 24, 2022 and continued to November 3, 2022 and recommended that the City Council adopt this ordinance. As part of its recommendation to the City Council, the Planning Commission determined that the Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan; is compatible with the uses authorized in and the regulations prescribed for the land use district in which the Project Site is located; is in conformity with public convenience, general welfare and good land use practice; will not be detrimental to the health, safety and general welfare of the City or the region surrounding the City; and will not adversely affect the orderly development of property or the preservation of property values within the City.

SECTION 4.
The City Council held a duly and properly noticed public hearing on the Development Agreement on November 15, 2022, continued to November 30, 2022 and continued to December 6, 2022. The City Council finds that the following are the relevant facts concerning the Development Agreement:

1. The General Plan designates the Main Project Site for Office and Mixed-Use Residential land uses and Hamilton Parcels for Retail/Commercial land uses. The Main Project Site is zoned O-B-X and R-MU-B-X, and the Hamilton Parcels are zoned C-2-S.
2. The Applicant proposes a unified development on the Main Project Site consisting of approximately 59 acres.

3. The Applicant proposes to demolish the existing buildings on the Main Project Site and redevelop the Project Site with the subsequent construction of a mixed-use development consisting of up to 1.6 million square feet of office and accessory uses (a maximum of 1,250,000 square feet for offices and the balance for accessory uses), up to 1,730 multifamily dwelling units, up to 200,000 square feet of retail uses, an up to 193-room hotel, and associated open space and infrastructure (the "Project").
4. The Applicant proposes to provide numerous community amenities, some of which are on the list of community amenities adopted by the City Council and some of which have been agreed upon by City and the Applicant in the Development Agreement, as specified in further detail in the Development Agreement. The Development Agreement's requirement for the Applicant to implement community amenities allow the Applicant to develop the Main Project Site with an increased floor area ratio, density, and height in the R-MU-B-X district and increased floor area ratio and height in the O-B-X district. The Applicant submitted an application identifying the amount of bonus development sought, an appraisal of the fair market value of the gross floor area of the bonus level of development compared to the fair market value of the base level development, and the projected value of the proposed community amenities. The City's economic consultant conducted a peer review analyzing and revising the values. Based upon such City-determined values, the value of the community amenities set forth in the Development Agreement will equal or exceed half the difference between the value of the base and bonus level development scenarios.

SECTION 5.

As required by Section 302 of Resolution No. 4159 and based on an analysis of the facts set forth above, the staff report to the City Council, the presentation to the Council, supporting documents, and public testimony, the City Council hereby adopts the following as its findings:

1. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified in the General Plan because the Project will create a live/work/play environment that will place office, residential and commercial uses in close proximity to one another. As described in the EIR, the Project will be consistent with the land use designations and the goals and polices of the General Plan.
2. The Development Agreement is compatible with the uses authorized in and the regulations prescribed for the O-B-X, R-MU-B-X, and C-2-S districts in which the Project Site is located because the Project includes office buildings, mixed use residential and retail buildings providing high density residential housing to serve both the office buildings and existing community housing needs and neighborhood-serving retail, and open space. As described in the EIR, the Project will be consistent with the development regulations of the applicable zoning districts, including the use of bonus level development and a master-planned project to provide creative designs, orderly development, and optimal use of open space while maintaining and achieving the City General Plan vision for the Bayfront Area.
3. The Development Agreement is in conformity with public convenience, general welfare and good land use practices because the Project is consistent with the General Plan and zoning designations for the Project Site and appropriate utilities and services can be provided for the Project.
4. The Development Agreement will not be detrimental to the health, safety and general welfare of the City or the region surrounding the City.
5. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values within the City.
6. The Development Agreement will promote and encourage the development of the Project by providing a greater degree of certainty with respect thereto by establishing the regulations concerning land use development, timing and sequencing of Project development and the payment of fees.

7. The Development Agreement will result in the provision of public benefits by the Applicant, including, but not limited to, payments to the City to offset lost revenue from the hotel in the event of construction delays (i.e. gap payment); financial commitments to ongoing job training and career experience programs; and stakeholder support for Dumbarton Rail Corridor Project and Dumbarton Forward.
8. The community amenities proposed in the Development Agreement have a value of at least fifty percent (50%) of the fair market value of the additional gross floor area of the bonus level development in accordance with Menlo Park Municipal Code Sections 16.43.070 and 16.45.070, and include, but are not limited to, additional funding for affordable housing, workforce housing, grocery, pharmacy services and banking uses, dining and entertainment uses, a shuttle to transport Bayfront residents to the Project Site, funding for air quality and noise monitors in the Belle Haven neighborhood, and community use of open space within the Project, including the elevated park and town square.

SECTION 6.
Based upon the above findings of fact, the Development Agreement for the Project is hereby approved, subject to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager in consultation with the City Attorney. The City Council hereby authorizes the Mayor to execute the Development Agreement and all documents required to implement the Development Agreement on behalf of the City.

SECTION 7.
No later than ten days after this ordinance is effective and has been executed by all parties, the City Clerk shall record with the San Mateo County Recorder a copy of the Development Agreement, as required by Government Code Section 65868.5.

SECTION 8.
If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or enforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 9.
This ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption, the ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

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INTRODUCED on the sixth day of December, 2022.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on the thirteenth day of December, 2022, by the following votes:

AYES: Mueller, Nash, Taylor, Wolosin

NOES: None

ABSENT: None

RECUSED: Combs

APPROVED:

DocuSigned by:
Betsy Nash
57474C88AC9C4B5...
Betsy Nash, Mayor

ATTEST:

DocuSigned by:
39280A20D0BE491...
Judi A. Herren, City Clerk

Exhibits:
A. Form of development agreement for the Willow Village project by and between the City and Peninsula Innovation Partners, LLC

EXHIBIT A

#4022 INB2714952

2023-014495
8:52 am 03/31/2023 AG Fee: NO FEE
Count of Pages 106
Recorded in Official Records
County of San Mateo
Mark Church
Assessor-County Clerk-Recorder

* $ R 0 0 0 3 3 4 4 4 1 6 $ *

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
Attn: City Clerk

Exempt from recording fee per Govt. Code §6103 and 27383

Space Above This Line Reserved for Recorder's Use

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DEVELOPMENT AGREEMENT

by and between the

CITY OF MENLO PARK,
a California municipal corporation

and

PENINSULA INNOVATION PARTNERS, LLC
a Delaware limited liability company

regarding the
Willow Village Master Plan Project

Dated: December 13, 2022

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LIST OF EXHIBITS

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") dated for reference purposes as of December 13, 2022, is entered into by and between PENINSULA INNOVATION PARTNERS, LLC, a Delaware limited liability company ("**Developer**"), a subsidiary of Meta Platforms, Inc., a Delaware corporation ("**Meta**"), and the CITY OF MENLO PARK, a California municipal corporation ("**City**"). Developer and City are sometimes referred to individually herein as a "**Party**" and collectively as "**Parties**."

RECITALS

The following recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Section 1.1 of this Agreement.

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 *et seq.* of the Government Code ("**Development Agreement Statute**") 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 in the subject property.

B. As authorized by the Development Agreement Statute, the City has adopted Resolution No. 4159 adopting regulations establishing procedures and requirements for consideration of development agreements within the City of Menlo Park ("**Development Agreement Regulations**"). The provisions of the Development Agreement Statute and City's Development Agreement Regulations are collectively referred to herein as the "**Development Agreement Law.**" This Agreement has been drafted and processed pursuant to the Development Agreement Law.

C. This Agreement concerns that certain real property measuring approximately sixty-two (62) acres located in the Bayfront Area of the City, as depicted in Exhibit A-1, and more fully described in Exhibit A-2, both attached hereto and incorporated herein by this reference ("**Property**"). The Property comprises approximately 59 acres intended as the primary development location ("**Main Project Site**") (depicted on Exhibit A-1-1 and described in Exhibit A-2-1), of which Developer is the owner and two parcels totaling approximately 3 acres west of Willow Road to accommodate realignment of Hamilton Avenue, of which LLBG Properties LLC, a Delaware limited liability company, is the owner ("**Hamilton Parcels**") (depicted on Exhibit A-1-2 and described in Exhibit A-2-2). Meta controls both Developer and LLBG Properties LLC, a Delaware limited liability company, and therefore Developer has an equitable interest in the Hamilton Parcels. Further, LLBG Properties LLC, a Delaware limited liability company, has consented to the terms of this Agreement as shown in Exhibit B.

D. Developer has submitted applications to the City to redevelop, or cause redevelopment of, the Property by demolishing approximately one million square feet of existing nonresidential buildings on the Main Project Site and developing a mixed-use project on the Property that at full buildout would consist of up to approximately 1.6 million square feet of

office and accessory space (of which up to 1.25 million square feet may be for office uses), 200,000 square feet of commercial/retail space, 1,730 multi-family residential units, a 193-room hotel ("**Hotel**") and 20 acres of open space including approximately 8 acres of publicly accessible parks and pathways, constructing a new north-south street and realigning other public rights-of-way, and creating a new Residential/Shopping District, Town Square District, and Campus District, all in two Phases as described in more detail in the Willow Village CDP (collectively, the "**Project**").

E. This Agreement between City and Developer sets forth, among other things, the applicable fees, policies and zoning requirements that apply to Developer's development of the Project and provides Developer with a vested right to develop the Project should Developer elect to develop the Project.

F. Pursuant to the California Environmental Quality Act and its associated regulations (Public Resources Code section 21000 *et seq.* and the CEQA Guidelines at California Code of Regulations, Title 14, section 15000 *et seq.*) (together and as they may be amended, "**CEQA**"), City previously prepared the Final Program Environmental Impact Report for the ConnectMenlo General Plan and Zoning Update (State Clearinghouse No. 2015062054), certified by the City Council of City on November 29, 2016 by Resolution No. 6356 ("**ConnectMenlo EIR**").

G. Pursuant to CEQA, City conducted environmental review of the Project, prepared and duly processed an Environmental Impact Report (State Clearinghouse No. 2019090428), tiering from the ConnectMenlo EIR as authorized by CEQA ("**Project EIR**"), and adopted a Mitigation Monitoring and Reporting Program for implementation of mitigation measures specified in the Project EIR and (as applicable to the Project) in the ConnectMenlo EIR as approved by the City ("**Project MMRP**").

H. Prior to or concurrently with approval of this Agreement, City has taken the following actions in connection with development of the Project on the Property (the "**Existing Approvals**").

1. Certification of the Project EIR as adequate under CEQA and adoption of the Project MMRP, by Resolution No. 6790, adopted by the City Council on the sixth day of December, 2022.

2. Approval of amendments to the Menlo Park General Plan Circulation Map to allow changes to streets and other public rights-of-way proposed for the Project, by Resolution No. 6791, adopted by the City Council on the sixth day of December, 2022.

3. Approval of amendments to the Menlo Park Zoning Map by Ordinance No. 1094, adopted by the City Council on the thirteenth day of December, 2022 to:

a. allow changes to streets proposed for the Project; and

b. revise zoning designations for the Property to add a conditional development ("X") combining district.

4. Approval of Conditional Development Permit to authorize a master-planned project with bonus-level development and allow other aspects of the Project, by Ordinance No. 1094, adopted by the City Council on the thirteenth day of December, 2022 ("**Willow Village CDP**").

5. Approval of Vesting Tentative Map for the Main Project Site to merge and re-subdivide existing parcels on the Property, approve abandonment and dedication of public rights-of-way and easements, and allow filing of multiple final maps for the Project, by Resolution No. 6792, adopted by the City Council on the sixth day of December, 2022 ("**Main Project VTM**"), together with associated conditions of approval ("**Main VTM Conditions**").

6. Approval of Vesting Tentative Map for the Hamilton Parcels to merge and re-subdivide existing parcels on the Property, approve abandonment and dedication of public rights-of-way and easements, and allow filing of multiple final maps for the Project, by Resolution No. 6793, adopted by the City Council on the sixth day of December, 2022 ("**Hamilton VTM**"), together with associated conditions of approval ("**Hamilton VTM Conditions**").

7. Approval of Below-Market Rate Housing Agreements specifying terms for Developer to provide onsite reduced-cost housing units, by Resolution No. 6794, adopted by the City Council on the sixth day of December, 2022 (collectively, the "**BMR Agreements**").

8. Approval of tree removal permits to remove 276 heritage trees on the Property, approved by the City Arborist on June 28, 2022 ("**Tree Permits**"), and not appealed to the Environmental Quality Commission, which approvals were conditioned on Developer receiving the other Existing Approvals listed in this Recital H.

9. Approval of this Agreement by Ordinance No. 1095, adopted by the City Council on the thirteenth of December, 2022 ("**Enacting Ordinance**").

I. City has determined that by entering into this Agreement, City will further the purposes set forth in the Development Agreement Law and City will benefit from the increased range of housing options, employment opportunities, retail establishments, circulation improvements, and open space created by the Project for residents of City.

J. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Existing Approvals and Subsequent 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 employment, tax, and other public benefits to City, and will contribute to redevelopment of the Bayfront Area and provide for Menlo Park residents expanded housing opportunities affordable to varying household income levels, which is a critical City need, thereby achieving the goals and purposes for which the Development Agreement Law was enacted.

K. The terms and conditions of this Agreement have undergone review by City staff, the Planning Commission 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 the 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 Agreement.

L. On November 3, 2022, the Planning Commission, the initial hearing body for purposes of development agreement review, recommended approval of this Agreement to the City Council. Following a duly noticed public hearing, on the sixth of December, 2022, the City Council introduced the Enacting Ordinance and on the thirteenth of December, 2022, the City Council adopted that Enacting Ordinance.

AGREEMENT

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

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions.

"**Administrative Amendment**" is defined in Section 8.5.

"**Affordable Housing Contribution**" is defined in Section 5.1D.

"**Agreement**" means this Agreement.

"**Agreement Date**" means the date of the second reading of the Enacting Ordinance.

"**Air Quality and Noise Monitoring Equipment**" is defined in Section 5.1E.

"**Applicable City Regulations**" means the permitted uses of the Property, the 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 conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for public improvements, and other terms and conditions of development applicable to the Property as set forth in the General Plan of the City on the Effective Date, the Existing Approvals, the Municipal Code of the City on the Effective Date, and the other ordinances, policies, rules, regulations, standards and specifications of the City in effect on the Effective Date.

"**Applicable Law**" means (a) all State and Federal laws and regulations applicable to the Property and the Project as enacted, adopted and amended from time to time and (b) the Applicable City Regulations.

"**Bank**" is defined in Section 5.1J.

"**Bayfront Shuttle**" is defined Section 5.1I.

"**BMR Agreement**" is defined in Recital H.

"**BMR Fee Holding Period**" is defined Section 5.7.

"**BMR Housing True Up Payment**" is defined Section 5.7.

"**BMR Units**" is defined Section 5.7.

"**CEQA**" is defined in Recital F.

"**CFDs**" is defined in Section 4.4.

"**CFD Bonds**" is defined in Section 4.4C.

"**CFD Facilities**" is defined in Section 4.4B.

"**Changes in the Law**" is defined in Section 3.8.

"**Chevron Parcel**" is defined in Section 8.7.

"**City**" means the City of Menlo Park, a California municipal corporation.

"**City Parties**" means City and its elected and appointed officials, officers, agents, employees, contractors and representatives.

"**City Council**" means the City Council of the City of Menlo Park.

"**Claims**" means liabilities, obligations, orders, claims, damages, fines, penalties and expenses, including reasonable attorneys' fees and costs.

"**Commence Construction**" or "**Commencement of Construction**" means the issuance of a building permit for vertical construction (including the Elevated Park), mobilization of construction equipment and workers on-site, and the beginning of physical construction activities under such permit.

"**Community Entertainment**" is defined in Section 5.1L.

"**Complete Construction**" or "**Completion of Construction**" means the completion of a final inspection by the City of the specified portion of the specified work or Improvement.

"**Conceptual**" or "**Conceptually**" means plans intended to convey the general vision and design intent of the Willow Village CDP, while allowing flexibility in interpretation and implementation. Conceptual plans serve as guidelines for general orientation and organization of land uses and transportation and open space networks, general scale and massing of development, and overall architectural themes.

"**Connection Fees**" means those fees duly adopted in accordance with applicable law and charged by City or by a utility provider to utility users as a cost for connecting to water, sanitary sewer and other applicable utilities.

"**ConnectMenlo EIR**" is defined in Recital F.

"**CPI**" means Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor or its successors, San Francisco-Oakland-Hayward, All Items (1982-84 = 100), or any successor index thereto designated by the Bureau of Labor Statistics or its successor.

"**CPI Adjustment**" means an adjustment of each dollar amount that is subject to CPI Adjustment under this Agreement and is made by multiplying the dollar amount being adjusted by the sum of (a) one hundred percent, plus (b) the CPI Increase.

"**CPI Increase**" means the percentage increase, if any (but not decrease, if any) between the CPI for the calendar month that is three months prior to the effective date of adjustment and the CPI for the calendar month that is fifteen months prior to the effective date of adjustment.

"**Default**" is defined in Section 11.1.

"**Developer**" means Peninsula Innovation Partners, LLC, a Delaware limited liability company, and its permitted assignees and successors-in-interest under this Agreement.

"**Development Agreement Law**" is defined in Recital B.

"**Development Agreement Regulations**" is defined in Recital B.

"**Development Agreement Statute**" is defined in Recital A.

"**Dining Venues**" is defined in Section 5.1K.

"**Dumbarton Forward**" is defined in Section 5.3D.

"**Dumbarton Rail Corridor Project**" is defined in Section 5.3C.

"**Effective Date**" is defined in Section 2.1.

"**Elevated Park**" is defined in Section 5.1A.

"**Elevated Park Segment Over Willow Road**" is defined in Section 5.1A.

"**Enacting Ordinance**" is defined in Recital H.

"**Exactions**" means exactions imposed by City as a condition of developing the Project, including requirements for acquisition, dedication or reservation of land; and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project, whether such exactions

constitute subdivision improvements, mitigation measures in connection with CEQA review of the Project, or impositions made under Applicable City Regulations. For purposes of this Agreement, Exactions do not include Impact Fees.

"**Excess Publicly Accessible Open Space**" is defined in Section 5.1O.

"**Existing Approvals**" is defined in Recital H.

"**Extension**" is defined in Section 2.2A(2).

"**Extension Conditions**" is defined in Section 2.2A(4).

"**Extension Request**" is defined in Section 2.2A(4).

"**Fee Credits**" is defined in Section 4.2.

"**Fee Paid BMR Units**" is defined in Section 5.7.

"**First Phase Community Entertainment**" is defined in Section 5.1L.

"**First Phase Dining Venues**" is defined in Section 5.1K.

"**Fiscal Year**" means the period from July 1- June 30.

"**Force Majeure Delay**" is defined in Section 2.2C.

"**Gap Payment**" is defined in Section 5.3G.

"**Gap Payment Commencement Date**" is defined in Section 5.3G(1).

"**Gap Payment Period**" is defined in Section 5.3G(1).

"**Gap Payment Termination Date**" is defined in Section 5.3G(1).

"**General Plan**" means the General Plan of the City of Menlo Park in effect as of the Agreement Date, as modified by the Existing Approvals.

"**Government Offices**" is defined in Section 2.2C.

"**Grocery Store**" is defined in Section 5.1B.

"**Grocery Store Performance Standard**" is defined in Section 5.1C.

"**Grocery Store Rent Subsidy**" is defined in Section 5.1C.

"**Hamilton Lessee Approvals**" is defined in Section 5.1A.

"**Hamilton Parcels**" is defined in Recital C.

"**Hamilton ROW Parcel**" is defined in Section 8.7.

"**Hamilton VTM**" is defined in Recital H.

"**Hamilton VTM Conditions**" is defined in Recital H.

"**Home Price Index**" is defined in Section 2.2C.

"**Hotel**" is defined in Recital D.

"**Impact Fee Limitation Period**" is defined in Section 4.1A.

"**Impact Fees**" means those fees set forth in Exhibit C, all of which are monetary fees and impositions, other than taxes and assessments, charged by City 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 development of the public facilities and services related to a development project and any "fee" as that term is defined by Government Code section 66000(b). For purposes of this Agreement, a monetary fee or imposition that meets both the definition of an Impact Fee and the definition of an Exaction will be considered an Impact Fee.

"**Improvement**" means all physical improvements required or permitted to be made under the Existing Approvals or Subsequent Project Approvals.

"**Improvement Plans**" is defined in Section 3.3B.

"**Inclusionary Units**" is defined in Section 5.7.

"**Initial Deposit**" is defined in Section 9.3C(1).

"**Initial Term**" is defined in Section 2.2A(1).

"**Job Training Funding and Community Hub**" is defined in Section 5.1G.

"**Linkage Equivalent Units**" is defined in Section 5.7.

"**Litigation Challenge**" is defined in Section 9.6B.

"**Local CFD Policies**" is defined in Section 4.4A.

"**Main Project Site**" is defined in Recital C.

"**Main Project VTM**" is defined in Recital H.

"**Main VTM Conditions**" is defined in Recital H.

"**MCS**" means Meeting and Collaboration Space, which shall consist of buildings and private gardens, as well as a Meta visitor's center and an event building south of the Elevated Park.

"**MCS Community Events**" is defined in Section 5.3I.

"**Memorandum of Extension**" is defined in Section 2.2A(6).

"**Meta**" is defined in the introductory paragraph preceding the Recitals of this Agreement.

"**Mortgage**" is defined in Section 7.1.

"**Mortgagee**" is defined in Section 7.1.

"**Municipal Code**" means the Municipal Code of the City of Menlo Park in effect as of the Agreement Date as amended by the Existing Approvals.

"**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 the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through the power of initiative or otherwise) after the Agreement Date.

"**Non-Intended Prevailing Wage Requirement**" is defined in Section 4.6D.

"**Notice**" is defined in Section 12.5.

"**Other Agency Fees**" is defined in Section 4.1D.

"**Other Agency Subsequent Project Approvals**" means Subsequent Project Approvals to be obtained from entities other than City.

"**Operating Memoranda**" is defined in Section 8.6.

"**Operating Memorandum**" is defined in Section 8.6.

"**Party/Parties**" is defined in the introductory paragraph preceding the Recitals of this Agreement.

"**Pause of Construction**" is defined in Section 5.7.

"**Pharmacy**" is defined in Section 5.1M.

"**PILOT Agreement**" is defined in Section 10.3.

"**Planning Commission**" means the Planning Commission of the City of Menlo Park.

"**Prevailing Wage Components**" is defined in Section 4.6A.

"**Prevailing Wage Laws**" is defined in Section 4.6A.

"**Processing Fees**" means all fees charged on a City-wide basis to cover the cost of City processing of development project applications, including any required supplemental or other further CEQA review, plan checking (time and materials) and inspection and monitoring for land use approvals, design review, grading and building permits, and other permits and entitlements required to implement the Project, which 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 and reasonable costs of processing the foregoing.

"**Project**" is defined in Recital D.

"**Project Approvals**" means the Existing Approvals and, when and as approved in accordance with the terms of this Agreement, the Subsequent Project Approvals.

"**Project EIR**" is defined in Recital G.

"**Project Manager**" is defined in Section 9.3C.

"**Project MMRP**" is defined in Recital G.

"**Property**" is defined in Recital C.

"**Proportionate Required BMR Units**" is defined in Section 5.7.

"**Publicly Accessible Open Space**" is defined in Section 5.3F.

"**Resumption of Construction**" is defined in Section 5.7.

"**Second Phase Community Entertainment**" is defined in Section 5.1L.

"**Second Phase Dining Venues**" is defined in Section 5.1K.

"**Severe Economic Recession**" is defined in Section 2.2C.

"**Special Tax**" is defined in Section 4.4D.

"**Specified Materials**" is defined in Section 5.6.

"**Subsequent Project Approvals**" is defined in Section 9.1.

"**Supplemental Gap Payment**" is defined in Section 5.3G(3).

"**Teacher Housing Rent Subsidies**" is defined in Section 5.1H.

"**Term**" is defined in Section 2.2.

"**Third Office COO Issuance**" is defined in Section 5.3G.

"**Town Square**" is defined in Section 5.1N.

"Transfer" is defined in Section 10.1.

"Tree Permits" is defined in Recital H.

"Willow Road Feasibility Study Funding" is defined in Section 5.1F.

"Willow Road Tunnel" is defined in Section 5.3H.

"Willow Village CDP" is defined in Recital H.

"Willow Village Open Space Rules" is defined in Section 5.3F.

"Willow Village Phasing Plan" is defined in Section 3.7.

"Willow Village Community Amenities" is defined in Section 5.1.

ARTICLE 2 EFFECTIVE DATE AND TERM

Section 2.1 Effective Date. This Agreement shall become effective upon the date that the Enacting Ordinance becomes effective (**"Effective Date"**).

Section 2.2 Term.

A. Term of Agreement. Except as to those obligations that expressly extend beyond the stated Term of this Agreement, the **"Term"** of this Agreement shall commence as of the Effective Date and shall continue for the Initial Term as defined in subsection Section 2.2A(1) below, plus the duration of any City-approved extension as provided in subsection (1) below, or until earlier terminated by mutual consent of the Parties or as otherwise provided by this Agreement.

(1) Initial Term of Agreement. The **"Initial Term"** of this Agreement shall be ten (10) years, commencing on the Effective Date and expiring on the tenth (10^{th}) anniversary thereof, unless this Agreement is otherwise terminated or extended in accordance with the provisions of this Agreement.

(2) 7-Year Extension. Subject to the terms and conditions in this Section 2.2, Developer shall have the right to extend the Initial Term for one additional seven (7)-year period (**"Extension"**). In order to obtain the Extension, Developer requesting the Extension must be in substantial compliance with all of its obligations set forth in this Agreement and Project Approvals with respect to the portion or portions of the Property for which Developer is seeking an Extension. If the Property is owned by more than one entity, a separate Extension may be sought for each portion of the Property that is in separate ownership; however, for the Extension to be granted, the conditions described in subsection (3) below must be satisfied.

(3) Extension Requirements. In addition to the conditions in subsection (1) above, in order to obtain the Extension, (a) certificates of occupancy must be issued for at least eight hundred and sixty-five (865) residential units, (b) the final certificate of

occupancy must be issued for the building in which the Grocery Store is located; and (c) the Grocery Store has received a final certificate of occupancy.

(4) Extension Request. If Developer desires to seek the Extension, Developer must submit a letter addressed to the City Manager requesting such Extension at least one hundred eighty (180) days prior to the date that the Initial Term otherwise would expire (the "**Extension Request**"). The Extension Request shall include documentation in a form reasonably acceptable to City demonstrating that the applicable conditions for an Extension described in subsections (1) and (3) above ("**Extension Conditions**") have been satisfied, or will be satisfied prior to the date that the Initial Term otherwise would expire. If a letter of compliance has been issued in accordance with Section 6.1F within no more than ninety (90) days prior to the submission of Extension Request to the City and City has not issued a Notice of Default following such letter of compliance, then such letter of compliance shall be a conclusive determination that Developer is in substantial compliance with this Agreement.

(5) Extension Review. Within 45 days of receipt of an Extension Request and accompanying documentation, the City Manager shall determine whether the Extension Conditions have been satisfied, including whether Developer is in substantial compliance with this Agreement. Except as otherwise provided in this Section 2.2, the determination whether Developer is in substantial compliance with this Agreement shall be undertaken in a manner consistent with the annual review process described in Section 6.1 below. If the City Manager determines Developer is not in substantial compliance with the Agreement through such review process, Developer shall have the opportunity to cure such non-compliance prior to the last date that the Extension Request is to be decided. If City Manager concludes that the Extension Conditions have been satisfied, then he or she shall grant the Extension Request and provide a Memorandum of Extension, in a recordable form, as described in Section 2.2A(6) below, that the Agreement has been extended for the extension period, and the Initial Term shall be extended accordingly. If the City Manager determines the Extension Conditions have not been satisfied, including that Developer is not in substantial compliance with this Agreement, or if there is any dispute regarding the steps required to satisfy the Extension Conditions, then Developer shall have ten (10) business days to present to the City Manager a letter providing written notice of the Developer's appeal of the City Manager's determination to the City Council. The City Council shall hear such an appeal within 60 days of the City Manager's receipt of the letter providing written notice of the appeal, and the City Council shall decide such appeal no later than 30 days before the date upon which the Initial Term otherwise would expire. If the City Council determines Developer is in substantial compliance with this Agreement and all of the applicable Extension Conditions have been satisfied, then the City Council shall grant the Extension Request and direct the City Manager within five (5) business days to provide Developer the Memorandum of Extension and the Initial Term shall be extended accordingly. If the City Council determines Developer is not in substantial compliance with this Agreement or one or more of the other applicable Extension Conditions have not been satisfied, then the City Council shall document such findings in its action denying the Extension Request. The City Council's decision shall be final, subject to Developer's ability to pursue available remedies as provided in Section 11.3 below.

(6) Memorandum of Extension. Within ten days after the written request of either Party hereto, City and Developer agree to execute, acknowledge and record in

the Official Records of the County of San Mateo a memorandum evidencing any approved Extension of the Term pursuant to this Section 2.2 ("**Memorandum of Extension**").

B. Effect of Termination. Upon the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions set forth in Section 11.7 below

C. Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, the Term of this Agreement and the Project Approvals and the time within which either Party shall be required to perform any act under this 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, lock outs 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; 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); acts of the public enemy; civil disturbances; wars; acts of terrorism; insurrection; riots; floods; earthquakes; fires; unavoidable casualties; epidemics; pandemics; quarantine restrictions; freight embargoes; government restrictions, or litigation; government mandated shutdowns or government closure (meaning any of the following events: (a) the governmental offices where any action required under this Agreement (collectively, "**Government Offices**") are not open for business and any Government Offices' systems are not operational such that such action cannot occur; (b) any other third-party is not open for business such that its services required as necessary for a Party to perform obligations under this Agreement cannot be performed; (c) overnight couriers are not operating such that any documents cannot be delivered to the extent such documents are required to be originals; or (d) financial institutions or wire transfer systems are not operating, such that consummation of financial transactions contemplated hereby cannot occur); a Severe Economic Recession, defined below; any other cause beyond the reasonable control of Developer which substantially interferes with carrying out the development of the Project; or litigation involving the Project Approvals (including this Agreement) or that enjoins construction or other work on the Project or any portion thereof or would cause a reasonably prudent developer either to forbear from commencing construction or other work on the Project or portion thereof or to suspend construction or other work (each a "**Force Majeure Delay**"). An extension of time for any such cause other than a Severe Economic Recession 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 by the Party claiming such extension is sent to the other Party within sixty (60) days after 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. Notwithstanding the foregoing, in the case of Force Majeure Delay due to litigation, the Force Majeure Delay shall terminate three (3) months after a final settlement or non-appealable judgment is issued or affirmed. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City Manager and Developer. 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 an excused delay. "**Severe Economic Recession**" means a significant decline in the residential real estate market, as measured by a decline of more than four percent (4%) in the Home Price Index during the preceding twelve (12) month period. Severe Economic Recession shall commence upon Developer's notification the City of the Severe Economic Recession (together with appropriate backup evidence). Severe Economic Recession shall continue prospectively on a quarterly basis and remain in effect until the Home Price Index increases for three (3) successive quarters; provided that the cumulative total Severe Economic Recession shall not exceed forty-eight (48) months. "**Home Price Index**" means the quarterly index published by the Federal Housing Finance Agency representing home price trends for the Metropolitan Statistical Area comprising San Francisco, San Mateo, Redwood City. If the Home Price Index is discontinued, Developer and the City shall approve a substitute index that tracks the residential market with as close a geography to the San Francisco, San Mateo, Redwood City Metropolitan Statistical Area as possible.

Section 2.3 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 Agreement.

B. The execution and delivery of this 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 Agreement is a valid obligation of City and is enforceable in accordance with its terms.

The foregoing representations and warranties are made as of the Agreement Date. During the Term of this Agreement, City shall, upon learning of any fact or condition that would cause any of the warranties and representations in this Section 2.3 not to be true, immediately give written Notice of such fact or condition to Developer.

Section 2.4 Developer Representations and Warranties. Developer represents and warrants to City that:

A. Developer is duly organized, validly existing and in good standing under the laws of the State of Delaware, is authorized to do business in the State of California 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 Developer under this Agreement.

B. The execution and delivery of this Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary corporate, partnership or company action and all necessary shareholder, member or partner approvals have been obtained.

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

D. Developer 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 Developer's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of Developer's assets, (iv) suffered the attachment or other judicial seizure of all, or substantially all, of Developer's assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally.

The foregoing representations and warranties are made as of the Agreement Date. During the Term of this Agreement, Developer shall, upon learning of any fact or condition that would cause any of the warranties and representations in this Section 2.4 not to be true, immediately give written Notice of such fact or condition to City.

ARTICLE 3 DEVELOPMENT OF PROPERTY

Section 3.1 Vested Rights. City hereby grants to Developer a vested right to develop and construct the Project on the Property, including all on-site and off-site improvements authorized by, and in accordance with, the Project Approvals. Except as otherwise provided in this Agreement, no New City Laws that conflict with this Agreement, the Applicable City Regulations, or the Project Approvals shall apply to the Project or the Property. For purposes of this Section 3.1 and Section 3.3 and Section 3.6, the word "conflict" means any modification that purports to: (i) limit the permitted uses of the Property, the maximum density and intensity of use (including but not limited to floor area ratios of buildings and the overall maximum size of allowed uses), 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; (iii) impose conditions upon development of the Property other than as permitted by Applicable Law, Changes in the Law, and the Project Approvals; (iv) limit the timing, phasing, sequencing, 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 the Existing Approvals; (vi) limit or control the ability to obtain public utilities, services, infrastructure, or facilities (provided, however, with the exception of provisions under the Willow Village CDP relating to the implementation and timing for the installation of recycled water facilities and procedures for exceedances as provided therein, nothing herein shall be deemed to exempt the Project or the Property from any water use conservation or rationing requirements that may be imposed on a City-wide basis to all substantially similar types of development projects and project sites (i.e., to all multifamily residential projects, to all office projects, to all retail projects, to all hotel projects) 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 approvals by the City other than those required by Applicable Law and the Existing Approvals; (viii) increase the permitted Impact Fees or add new Impact Fees, except as permitted by Section 4.1 of this Agreement; (ix) establish, enact, increase, or impose against the Project or the Property any special taxes or assessments other than those specifically permitted by this Agreement, including Section 4.7, (x) 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 (i.e., to all multifamily residential projects, to all office projects, to all retail projects, to all hotel projects); (xi) impose against the Project any condition, dedication or other Exaction not specifically authorized by Applicable Law or the Existing Approvals; or (xii) impose against the Project any obligations regarding the construction of or provision of below market rate units not specifically required by the Existing Approvals. To the extent that New City Laws conflict with the vested rights granted pursuant to this Agreement, they shall not apply to the Property or the Project, except as provided in Section 3.3, below. Nothing in this Agreement is intended to supersede or limit vested rights provided through any vesting subdivision map or otherwise applicable state law, except for the payment of fees, which shall be governed by Section 4.1 of this Agreement notwithstanding any vesting of fees otherwise provided by any vesting subdivision map pursuant to the provisions of the Subdivision Map Act.

Section 3.2 Development and Design Standards. The Project shall be developed in conformance with the Existing Approvals and Applicable City Regulations and the Subsequent Project Approvals. The permitted uses, density and intensity of development, maximum height and size of proposed buildings and development standards shall all be in accordance with the Existing Approvals and Applicable City Regulations. Project design and materials will need to the urban design standards outlined in the Willow Village CDP. City's review of applications for Subsequent Project Approvals shall be in accordance with the Existing Approvals and the Applicable City Regulations.

Section 3.3 Reservations of Authority. Notwithstanding any other provision of this Agreement to the contrary, the following 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 of permit application.

B. Regulations governing construction standards and specifications, including City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in City at the time of building permit application. Local modifications to the Building Code that take effect after the submission for approval of plans, specifications and estimates for Project-serving improvements (both on- and off-site) for the Project ("**Improvement Plans**") to the City shall not apply to such Improvement Plans unless required (i) by the then-current version of the California Building Code, (ii) to comply with State or Federal Law, or (iii) to avoid a specific, adverse impact upon the public health or safety. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the Improvement Plans were submitted to the City for approval.

C. New City Laws applicable to the Property or Project that do not conflict with this Agreement, including Developer's vested rights under Section 3.1 above.

D. New City Laws that may be in conflict with this Agreement but that are necessary to protect persons or property from dangerous or hazardous conditions that create a specific, adverse impact upon public health or safety or create a physical risk to persons or property, based on findings by the City Council identifying the dangerous or hazardous conditions requiring such changes in the law, where there are no feasible alternatives to the imposition of such changes, and how such changes would alleviate the dangerous or hazardous condition. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the Improvement Plans were submitted to the City for approval.

E. Exactions permitted by Section 9.2 of this Agreement.

Section 3.4 Regulation by Other Public Agencies. Developer acknowledges and agrees that the State of California Department of Transportation, SamTrans, the California Public Utilities Commission, the San Francisco Public Utilities Commission, West Bay Sanitary District, and other public agencies not within the control of City possess authority to regulate aspects of the development of the Project separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Developer shall use reasonable diligence in applying for all such other permits and approvals as may be 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 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 3.5 Life of Project Approvals. The term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Agreement or the term otherwise applicable to such Project Approvals. In the event that this Agreement is terminated prior to the expiration of the Term of the Agreement, the term of any subdivision or parcel map or any other Project Approval and the vesting period for any final subdivision map approved as a Project Approval shall be the term otherwise applicable to the approval, which shall commence to run on the date that the termination of this Agreement takes effect (including any extensions); provided, however, that the statutory vesting period for fees shall be calculated based upon the original date of approval of any Vesting Subdivision Map.

Section 3.6 Initiatives. Except as to those New City Laws described in Section 3.3D (which may be enacted or imposed by initiative or referendum), if any New City Law is enacted or imposed by an initiative or referendum, which New City Law would conflict with the Project Approvals or reduce the development rights or assurances provided by this Agreement, such New City Law shall not apply to the Property or Project; provided, however, the Parties acknowledge that City's approval of this 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, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City

Council, an agency of City, the electorate, or otherwise) affecting subdivision maps, use permits, building permits, occupancy 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 limitations 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 this Agreement remains in full force and effect. City, except to submit to vote of the electorate initiatives and referendums required by 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 Agreement.

Section 3.7 Timing of Development. Nothing in this Agreement obligates Developer to undertake the Project. The timing of development of the Project Improvements shall be undertaken, if undertaken by Developer, in accordance with the Willow Village Phasing Plan, attached hereto as Exhibit D (**"Willow Village Phasing Plan"**) and in accordance with Section 5.1 and the Willow Village Community Amenities Provisions, attached hereto as Exhibit F. The Willow Village Phasing Plan sets forth the order and timing of when certain Improvements will be constructed and/or occupied within the Project. Each Improvement identified in the Willow Village Phasing Plan shall be defined with reference to the Improvement with the same name as shown on the Site Plan attached as Exhibit E to this Agreement, in locations substantially consistent with the Site Plan. Modifications may be made to the timing set forth in the Willow Village Phasing Plan through an Operating Memorandum approved pursuant to Section 8.6 to this Agreement.

However, and not in 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. Therefore, 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 Existing Approvals and in this 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 sole discretion and consistent with the terms of this Agreement.

Section 3.8 Changes in the Law. As provided in Section 65869.5 of the Development Agreement Law, this Agreement shall not preclude the applicability to the Project of changes in laws or regulations, to the extent that such changes are specifically mandated and required by changes in State or Federal laws (**"Changes in the Law"**). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this 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 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 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 Agreement, Developer may terminate this Agreement by Notice to City. Nothing in this 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 Agreement shall remain unmodified and in full force and effect and times of performance extended in accordance with Section 2.2C, unless the Parties mutually agree otherwise.

Section 3.9 Expansion of Development Rights. If any New City Laws or Changes in Law expand, extend, enlarge or broaden Developer's rights to develop the Project, then, (a) if such law is mandatory, the provisions of this Agreement shall be modified as may be necessary to comply or conform with such new law, and (b) if such law is permissive, the provisions of this Agreement may be modified, upon the mutual agreement of Developer and City. Immediately after enactment of any such new law, upon Developer's request, the Parties shall meet and confer in good faith for a period not exceeding sixty (60) days (unless such period is extended by mutual written consent of the Parties) to prepare such modification in the case of a mandatory law or to discuss whether to prepare a proposed modification in the case of a permissive law. Developer shall have the right to challenge City's refusal to apply any new law mandating expansion of Developer's rights under this Agreement, and in the event such challenge is successful, this Agreement shall be modified to comply with, or conform to, the new law.

Section 3.10 No Reservation of Sanitary Sewer or Potable Water Capacity. City has found that there will be sufficient potable water and sanitary sewer capacity to serve future development contemplated by the General Plan, including the Project. However, as noted in Section 3.1 above, with the exception of provisions under the Willow Village CDP relating to the implementation and timing for the installation of recycled water facilities and procedures for exceedances as provided therein, nothing in this Agreement is intended to exempt the Project or the Property from any water use conservation or rationing requirements that may be imposed on a City-wide basis to all substantially similar types of development projects and project sites (i.e., to all multifamily residential projects, to all office projects, to all retail projects, to all hotel projects) from time to time in the future or be construed as a reservation of any existing sanitary sewer or potable water capacity. In the event Developer's lenders or financing partners request issuance of water and/or sanitary sewer "will serve" letters as a condition of providing debt or equity financing for the Project, City agrees to consider in good faith issuing such letters on terms reasonably acceptable to City.

Section 3.11 Project Approvals and Applicable City Regulations. Prior to the Effective Date, the Parties shall have prepared two (2) sets of the Existing Approvals and Applicable City Regulations, one (1) set for City and one (1) set for Developer, to which shall be added from time to time, Subsequent Project Approvals, so that if it becomes necessary in the future to refer to any of the Project Approvals or Applicable City Regulations, there will be a common set available to the Parties. Failure to include in the sets of Project Approvals and Applicable City Regulations any rule, regulation, policy, standard or specification that is within the Applicable City Regulations and Project Approvals as described in this Agreement shall not affect the applicability of such rule, regulation, policy, standard or specification.

Section 3.12 Written Verification of Sufficient Water Supply. Any and all tentative subdivision maps approved for the Project shall comply with Government Code Section 66473.7, if, and to the extent, required by Government Code Section 65867.5(c).

ARTICLE 4 OTHER RIGHTS AND OBLIGATIONS OF THE PARTIES

Section 4.1 Developer Fees.

A. Impact Fees. City understands that the limited assurances by City concerning Impact Fees set forth below were a material consideration for Developer agreeing to enter into this Agreement, to pay the Impact Fees set forth in this Agreement and the Existing Approvals, and to provide the public benefits as described in this Agreement. For the period commencing on the Effective Date and continuing until expiration of the Impact Fee Limitation Period (defined below), Developer shall pay when due all existing Impact Fees applicable to the Project in accordance with this Agreement in effect as of the Agreement Date at the lower of (i) the rates in effect as of the Agreement Date, including all existing fee escalation provisions in effect as of the Agreement Date, or (ii) the rates in effect when such existing Impact Fees are due and payable, and shall not be required to pay any escalations in such Impact Fees in excess of the fee escalation provisions in any Impact Fee in effect as of the Agreement Date or new Impact Fees enacted or established after the Agreement Date. As used herein, the term "**Impact Fee Limitation Period**" means the period commencing on the Effective Date and expiring on expiration of the Initial Term; provided, however, the Impact Fee Limitation Period will be automatically extended for the first three (3) years of any Extension Term Developer obtains pursuant to Section 2.2A. Following expiration of the Impact Fee Limitation Period, individual components and phases of the Project not yet undertaken, with no retroactive application to portions of the Project that have been completed or are then under construction, shall be subject to all Impact Fees in effect at the time such fees are due and payable. Except as otherwise provided in this Section 4.1A above, Developer agrees to pay, as and when due, any and all existing, new, increased or modified Impact Fees, at the rates then in effect at the time building permits are issued on any or all portions of the Project so long as any new fees or increases in existing fees from the amount existing as of the Agreement Date are uniformly applied by City to all substantially similar types of development projects and properties (i.e., all office projects, all multifamily residential projects, all retail projects, or all hotel projects) and are consistent with the provisions of applicable California law, including the provisions of Government Code Section 66000 *et seq.*, and all applicable nexus and rough proportionality tests and other legal requirements. Developer retains all rights to protest an imposition, fee, dedication, reservation, or other exaction, as set forth in California Government Code Section 66020.

B. Processing Fees. City may charge and Developer agrees to pay all Processing Fees that are in effect on a City-wide basis at the time applications are submitted for permits, approvals or entitlements for the Project.

C. Connection Fees. Developer shall pay connection fees assessed by utility providers and other agencies assessing such fees at the rates in effect from time to time.

D. Other Agency Fees. Nothing in this Agreement shall preclude City from collecting fees from Developer that are lawfully imposed on the Project by another agency

having jurisdiction over the Project, which the City is required to collect pursuant to Applicable Law ("**Other Agency Fees**").

Section 4.2 Fee Credits. Developer shall receive credit for the payment of transportation Impact Fees in accordance with the provisions of Municipal Code Section 13.26.080 and this Section 4.2. "**Fee Credits**" shall be as set forth in the Willow Village CDP. In addition, in the event that the amount of transportation impact fee credits for eligible transportation improvements to be constructed by Developer pursuant to the Willow Village CDP exceeds the amount of the transportation Impact Fees due for the Project, then City shall reimburse Developer from transportation Impact Fee funds collected by the City from other sources subject to the transportation Impact Fee.

Section 4.3 Reimbursements from Other Developers. To the extent that Developer constructs public infrastructure that is not eligible for Fee Credits or reimbursement by the City, as provided above, in excess of Developer's "fair share" cost of such public infrastructure improvements, then the City shall use its best efforts to condition projects to be constructed by other parties benefiting from such infrastructure to enter into infrastructure-item-specific reimbursement agreements for the portion of the cost of any dedications, public facilities and/or infrastructure the City may require the Developer to construct as conditions of the Project Approvals to the extent that they exceed the Project's "fair share." Where projects to be constructed by other parties have been conditioned to construct a portion of or pay a fair share fee for public improvements being constructed by Developer, then City shall use its best efforts to cause such third-party developers to reimburse Developer for the applicable third-party developer's fair share of the improvement costs incurred by Developer, in an amount consistent with such third-party developer's prior approvals.

Section 4.4 CFDs.

A. Local CFD Policies and CFD Formation. City agrees to consider adopting a local policy pursuant to Government Code Section 53312.7 ("**Local CFD Policies**") to authorize the formation of Community Facilities Districts pursuant to the Mello-Roos Act (Government Code Section 53311 *et seq.*) ("**CFDs**") to serve residential and mixed-use projects and the issuance of bonds to finance eligible public facilities and/or provide financing for eligible services. If Local CFD Policies are adopted and Developer files a petition requesting that City form a CFD to serve the Project, the Parties shall cooperate in good faith to establish a CFD to serve the Project. The boundaries of the CFD shall be coextensive with those of the Main Project Site, unless the Parties otherwise agree. Upon the filing of a petition by Developer pursuant to Government Code Section 53318(c), the City Council shall consider adoption of a resolution of intention to establish the CFD and, following adoption, City shall use good faith, diligent efforts, in compliance with Government Code Sections 53318 *et seq.*, to establish and implement the CFD pursuant to the terms of this Agreement, including scheduling of necessary public hearings and adoption of a resolution of formation. Developer shall cooperate with City in the formation of any CFD requested by Developer, including the timely submission of all petitions, waivers and consents. Developer shall prepare, and submit to the City no later than the date Developer files a petition for a CFD, a financial plan specifying the proposed total amount of debt or other financing for the CFD Facilities, including the projected costs of the CFD Facilities that support the proposed total amount of financing, to be financed by CFD Bonds, the

Special Tax, or a combination of CFD Bonds and Special Tax, which financial plan shall be subject to the approval of the City, which approval will not be unreasonably withheld, delayed, or conditioned.

B. CFD Facilities and Services. Subject to caps on the total amount of net CFD Bond proceeds and the total tax and assessment rate set forth in subsection D below, the CFD shall finance the design and acquisition or construction of those facilities necessary for development of the Project ("**CFD Facilities**") and services that may lawfully be financed or paid for under the Mello-Roos Act and other applicable law. Financing of the CFD Facilities, or portion thereof, with CFD Bonds shall be subject to approval of City.

C. Issuance of CFD Bonds. Upon successful formation of the CFD and approval of the Special Tax (as defined in subsection D below), and subject to the restrictions in subsection C below, bonds shall be issued ("**CFD Bonds**"), the proceeds of which shall be used to finance the CFD Facilities, to the extent the CFD Facilities, or portion thereof, legally and feasibly may be financed utilizing this method of financing. The amounts, timing and terms of the issuance and sale of the CFD Bonds shall be determined by City, in consultation with Developer and City's bond counsel, financial advisors and/or underwriters.

D. Special Tax. The CFD shall be authorized to levy, and Developer shall approve (by affirmative vote or other legally acceptable method), a tax ("**Special Tax**") in accordance with the rate and method of apportionment of such Special Tax approved in the completed proceedings for the CFD. The Special Tax so set shall be in an amount such that, at the time the rate and method of apportionment of the Special Tax is approved, the estimated maximum special tax within the CFD district shall not exceed $750 per each dwelling (in 2022 dollars) for residential property and $0.75 per square foot for non-residential property (in 2022 dollars).

E. City's Reservation of Discretion. It is expressly acknowledged, understood and agreed by the Parties that notwithstanding any of the foregoing obligations set forth in this section, (i) City reserves full and complete discretion in accordance with applicable law with respect to any adoption of Local CFD Policies and all legally required findings that must be made in connection with formation of a CFD, (ii) nothing in this Agreement is intended to or shall limit City's discretion in accordance with applicable law to adopt or refuse to adopt the Local CFD Policies or adopt legally required findings with respect to formation of the CFD, and (iii) nothing in this Agreement is intended to or shall prejudge or commit to City regarding the findings and determinations to be made with respect thereto.

F. Costs If No CFD Formed. In the event that City does not adopt the Local CFD Policies or is unable to make the legally required findings in connection with the formation of the CFD and the issuance of CFD Bonds for any reason, City shall not be liable for any resulting costs to Developer and Developer shall nonetheless be responsible for constructing all of the CFD Facilities and providing any services for which a CFD was sought at Developer's expense.

G. Developer's Consent. Subject to City adopting Local CFD Policies, and subject to and Developer requesting and City adopting a CFD for the Project and in accordance

with the caps on the total amount of net CFD Bond proceeds and the total tax and assessment rate set forth in subsection D above and Developer's approval of the rate and method of apportionment of the Special Tax, which approval shall not be unreasonably withheld, delayed or conditioned, Developer irrevocably consents to the formation of the CFD, the issuance of the CFD Bonds, the imposition of the Special Tax against the Property at rates and pursuant to a method of apportionment appropriate to fund the debt service on the CFD Bonds sold to finance the CFD Facilities, and agrees not to protest or object to formation of the CFD or levy of an appropriate Special Tax consistent herewith. Developer acknowledges and agrees that CFD Bonds shall not be issued to fund any on-site public improvements or any other infrastructure or fees other than the CFD Facilities, or portion thereof, which may lawfully be financed under the Mello-Roos Act and other applicable law.

H. Limited Liability of City. Notwithstanding any other provision of this Agreement, City shall not be liable for or obligated to pay any costs or expenses in connection with the CFD or the CFD Facilities except to the extent monies are available (from Advanced Costs, proceeds of CFD Bonds, or Special Taxes) and specifically authorized by law for payment of such costs or expenses.

Section 4.5 Public Infrastructure. City shall use good faith, diligent efforts to work with Developer to ensure that all public infrastructure required in connection with the Project is expeditiously reviewed and considered for acceptance by City on a phased basis as discrete components of the public infrastructure is completed. Developer may offer dedication of public infrastructure in phases and City shall not unreasonably withhold, condition or delay acceptance of such phased dedications or refuse phased releases of bonds or other security so long as all other conditions for acceptance have been satisfied. Developer's obligation to construct the public improvements shall be set forth in one or more public improvement agreements to be entered into by the Parties on or before approval of final subdivision maps for the Project. Upon acceptance of the public improvements, or components thereof, City shall release to Developer any bonds or other security posted in connection with performance thereof, other than warranty period security, as more fully provided in the applicable improvement agreements between City and Developer in accordance with the Subdivision Map Act. Except as to the Willow Road Tunnel and the Elevated Park Segment Over Willow Road as provided in Section 5.4 below, and in such improvement agreements with respect to Developer's warranty period obligations, Developer shall have no obligation to maintain any public infrastructure following City's acceptance thereof.

Section 4.6 Prevailing Wage Requirements.

A. To the extent applicable, Developer shall comply with, and require its contractors and subcontractors to comply with, all State Labor Code requirements and implementing regulations of the Department of Industrial Relations pertaining to "public works," including the payment of prevailing wages (collectively, "**Prevailing Wage Laws**"). Developer shall require the contractor(s) for all work that is subject to Prevailing Wage Laws ("**Prevailing Wage Components**") to submit, upon request by City, certified copies of payroll records to City at the Property or at another location within City, and to maintain and make records available to City and its designees for inspection and copying to ensure compliance with Prevailing Wage Laws. Developer shall also include in each of its contractor agreements, a provision in form

reasonably acceptable to City, obligating the contractor to require its contractors and/or subcontractors to comply with Prevailing Wage Laws in connection with the Prevailing Wage Components, and to submit, upon request by City, certified copies of payroll records to City and to maintain and make such payroll records available to City and its designees for inspection and copying during regular business hours at the contractor's or subcontractor's regular place of business. City and Developer each acknowledge and agree that it is a condition of approval of the Project that Developer construct public improvements to be dedicated to the City as part of the Project.

B. Developer shall defend (with counsel reasonably acceptable to the City), indemnify, assume all responsibility for, and hold harmless City Parties from and against any and all present and future Claims arising out of or in any way connected with Developer's or its contractors' or subcontractors' obligations to comply with all 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.

C. Developer hereby waives and releases City Parties from any and all manner of Claims or other compensation whatsoever, in law or equity, of whatever kind or nature, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent, now existing or which may in the future arise, including lost business opportunities or economic advantage, and special and consequential damages, arising out of, directly or indirectly, or in any way connected with Developer's obligation to comply with all Prevailing Wage Laws in conjunction with the Prevailing Wage Components. Developer is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

INITIALS: DEVELOPER _____

As such relates to this Section 4.6, Developer hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

D. Non-Intended Prevailing Wage Requirements. Nothing in this Agreement shall in any way require, or be construed to require, Developer to pay prevailing wages with respect to any work of construction or improvement within the Project (a "**Non-Intended Prevailing Wage Requirement**"). But for the understanding of the Parties as reflected in the immediately preceding sentence, the Parties would not have entered into this Agreement based upon the terms and conditions set forth herein. Developer and City have made every effort in reaching this Development Agreement to ensure that its terms and conditions will not result in a Non-Intended Prevailing Wage Requirement. These efforts have been conducted in the absence of any applicable existing judicial interpretation of the recent amendments to the California

prevailing wage law. If, despite such efforts, any provision of this Agreement shall be determined by any court of competent jurisdiction to result in a Non-Intended Prevailing Wage Requirement, such determination shall not invalidate or render unenforceable any provision hereof; provided, however, that the Parties hereby agree that, in such event, this Agreement shall be reformed such that each provision of this Agreement that results in the Non-Intended Prevailing Wage Requirement will be removed from this Agreement as though such provisions were never a part of the Agreement, and, in lieu of such provision(s), replacement provisions shall be added as a part of this Agreement as similar in terms to such removed provision(s) as may be possible and legal, valid and enforceable but without resulting in the Non-Intended Prevailing Wage Requirement.

Section 4.7 Taxes and Assessments. As of the 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. City may impose new taxes and assessments, other than Impact Fees, on the Property in accordance with the then applicable laws and this Agreement, 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 (i.e., office, multifamily residential, retail, or hotel, as applicable) within the jurisdiction of 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. In the event an assessment district is lawfully formed to provide funding for services, improvements, maintenance or facilities that are substantially the same as or duplicative of those services, improvements, maintenance or facilities being funded by the Impact Fees to be paid by Developer under the Project Approvals, such Impact Fees paid or to be paid by Developer shall be subject to reduction/credit in an amount equal to developer's new or increased assessment under the assessment district. Alternatively, the new assessment district shall reduce/credit Developer's new assessment in an amount equal to such Impact Fees paid or to be paid by Developer under the Project Approvals.

ARTICLE 5 COMMUNITY AMENITIES; PUBLIC BENEFITS; TERMS REGARDING MAINTENANCE AND COMPLETION OF PROJECT IMPROVEMENTS

In consideration of the rights and benefits conferred by City to Developer under this Agreement, if and to the extent that Developer commences construction of the Project, Developer shall perform and provide the obligations described in this ARTICLE 5 at the times and on the conditions specified herein and in Exhibit F. The Parties acknowledge and agree that some of the obligations described in this ARTICLE 5 exceed those dedications, conditions, and exactions that may be imposed under Applicable Law and would not otherwise be achievable without the express agreement of Developer. Notwithstanding anything to the contrary contained herein, Developer has no obligation to perform the obligations under this ARTICLE 5 unless and until Developer commences construction of the portion of the Project that requires such performance.

Section 5.1 Bonus Development Community Amenities. In order to obtain the right to bonus level development within the Residential Mixed Use District and the Office District, as defined in the Municipal Code, the Municipal Code requires that Developer implement community amenities with a valuation of fifty percent (50%) of the fair market value of the additional gross floor area of the bonus level development. The Municipal Code requires each community amenity to be either selected from a list of community amenities set forth in Resolution No. 6360 or agreed upon by Developer and City pursuant to a development agreement. This Agreement documents the requirements for and governs the delivery of all community amenities for the Project. If and to the extent that Developer commences construction of the Project, Developer shall implement the community amenities set forth in this Section 5.1 at the times and on the conditions specified herein and in Exhibit F, some of which are on the list of community amenities set forth in Resolution No. 6360 and some of which are additional and have been agreed upon by the Parties pursuant to this Agreement (collectively, "**Willow Village Community Amenities**"). The Willow Village Community Amenities shall be implemented at the times set forth in the Willow Village Community Amenities Timing Provisions attached hereto as Exhibit F, except to the extent that the obligations set forth in Exhibit F are modified in accordance with this Agreement. Undefined, capitalized terms in Exhibit F shall have the meanings ascribed to them in this Agreement. If and to the extent that Developer commences construction of the Project, Developer's failure to provide any of the Willow Village Community Amenities as set forth in this Section 5.1 by the times set forth in Exhibit F shall be a Default.

A. Elevated Park. Developer shall construct an elevated park to provide direct and convenient access from Belle Haven to the Main Project Site, which will include bike and pedestrian paths, gathering spaces, plazas, and landscaped areas as depicted Conceptually on Exhibit E-1 and Exhibit E-2 ("**Elevated Park**"). If Developer obtains all necessary Other Agency Approvals and the consent of the commercial lessees in the shopping center located on one of the Hamilton Parcels ("**Hamilton Lessee Approvals**"), a portion of the Elevated Park shall include a bike and pedestrian overcrossing over Willow Road. This portion of the Elevated Park is within State of California Department of Transportation right of way and shall be referred to as the "**Elevated Park Segment Over Willow Road**." Developer's inability to secure such Other Agency Approvals and Hamilton Lessee Approvals for the Elevated Park Segment Over Willow Road shall not be a Force Majeure Delay. Developer shall make good faith efforts to obtain such Other Agency Approvals and Hamilton Lessee Approvals, but if Developer fails to secure such Other Agency Approvals and Hamilton Lessee Approvals prior to the development of Phase 2, as defined in the Willow Village CDP, Developer shall have no further obligation to construct the Elevated Park Segment Over Willow Road or the portion of the Elevated Park on the Hamilton Parcels and shall instead (1) pay a community amenity fee in the amount of Twenty Million Seven Hundred Thirty Eight Thousand Sixty-Two Dollars ($20,738,062), which represents one hundred and twenty percent (120%) of one hundred percent (100%) of the cost to construct the Elevated Park Segment Over Willow Road and the portion of the Elevated Park on the Hamilton Parcels based on the square footage of such portions relative to the whole of the Elevated Park and (2) ensure that the vertical transportation system (i.e, elevators, stairs, etc.) at the westerly side of the Elevated Park is located reasonably proximate to the eastern side of Willow Road, taking into account Project design and utility considerations, as depicted Conceptually in Exhibit E-4, attached hereto.

B. Grocery Store. Developer shall construct a grocery store, which will be located on Parcel 2, which store shall be a full-service store providing a range of goods, including: fresh fruits, vegetables, meat and fish; dairy products; beer and wine; fresh baked goods; and a delicatessen or prepared foods ("**Grocery Store**"). The Grocery Store shall be leased to an operator or affiliate of an operator with at least five (5) years of experience or five (5) stores unless an operator with less experience or fewer stores is approved in writing by City's Community Development Director.

C. Grocery Store Rent Subsidy. Developer shall provide a subsidy for two (2) years of rent in the amount of One Million Nine Hundred Seventy-Two Thousand Six Hundred and Thirty Dollars ($1,972,630) to the Grocery Store tenant ("**Grocery Store Rent Subsidy**"). In addition, to assist the Grocery Store to remain in operation in the event that the Grocery Store tenant is not achieving sales of at least Fourteen Dollars ($14) per square foot, excluding prescription drug sales, in weekly average sales on an annual look back (the "**Grocery Store Performance Standard**") during the third (3rd) through fifth (5th) years of operation, with the first annual lookback occurring on the third (3rd) anniversary of the Grocery Store opening, Developer shall offer the Grocery Store tenant an additional rent subsidy in the amount of the delta between the Grocery Store tenant's sales and the Grocery Store Performance Standard, not to exceed a total of One Million Dollars ($1,000,000) over such three (3) year period. If Developer does not offer the maximum subsidy after the first annual look back, Developer shall conduct a second annual look back on the fourth (4^{th}) anniversary of the Grocery Store opening. Developer shall also conduct a third annual look back on the fifth (5^{th}) anniversary of the Grocery Store opening if One Million Dollars in total has not yet been provided. Developer shall report as part of the annual review pursuant to Section 6.1 whether any additional rent subsidy has been provided under this Section 5.1C after each annual look back. Developer shall state whether the full amount of the subsidy was provided after each annual look back, but shall not otherwise be required to disclose the specific subsidy amounts paid after each annual look back. Nothing under this Section 5.1C shall require Developer or the Grocery Store tenant to disclose any Grocery Stores sales information to the City.

D. Affordable Housing Contribution. Developer shall provide Six Million Dollars ($6,000,000) in funding for affordable housing in the City, with priority for Belle Haven residents to the extent permitted by applicable law (the "**Affordable Housing Contribution**").

E. Air Quality and Noise Monitoring Equipment Funding. Developer shall provide one time funding in the amount of Two Hundred Thousand Dollars ($200,000) to the City for the City to procure and install at locations determined by the City in the Belle Haven neighborhood one (1) new high-quality air monitoring system that shall meet Bay Area Air Quality Management District sensor requirements and one (1) new high-quality noise monitoring system that is capable of at least an 80 dB dynamic range, such that if they are set to measure as low as 20 dB, then it is able to measure sound levels as high as 100 dB ("**Air Quality and Noise Monitoring Equipment**"). Developer shall reasonably cooperate with City and any City consultants regarding make and model or other similar technical questions that may arise regarding the Air Quality and Noise Monitoring Equipment.

F. Willow Road Feasibility Study Funding. Developer shall make a one-time payment of One Hundred Thousand Dollars ($100,000) to City to support feasibility studies to

be undertaken by City related to Willow Road ownership (the "**Willow Road Feasibility Study Funding.**")

G. Job Training Funding and Community Hub. Developer shall provide funding to the below specified entities in the aggregate total amount of Eight Million Three Hundred Four Thousand Nine Hundred and Seven Dollars ($8,304,907) for the following from February 2022 through December 2024:

(1) Career pathway programs in partnership with local non-profit YearUp;

(2) Career pathway programs in partnership with local non-profit JobTrain;

(3) A facility to be managed by Developer that will prepare local residents with job skills and fund internships for Menlo Park residents, with priority for Belle Haven residents, to the extent permitted by law.

The obligations set forth in this Section 5.1G shall be referred to collectively as the "**Job Training Funding and Community Hub.**" The funding costs are intended to include all costs incurred by Developer in providing the Job Training Funding and Community Hub, including rent and staffing costs associated with the Job Training Funding and Community Hub.

H. Teacher Housing Rent Subsidies. Developer shall provide subsidized rent in the amount of One Million Seven Hundred Forty-Five Thousand Three Hundred Nineteen Dollars ($1,745,319) for twenty-two (22) teachers currently living at 777 Hamilton Apartments in Belle Haven from February 2022 through March 2024 ("**Teacher Housing Rent Subsidies**"). The Teacher Housing Rent Subsidies shall be provided pursuant to Meta's existing Workforce Housing Fund Pilot Program established pursuant to the Development Agreement between Hibiscus Properties, LLC, a Delaware limited liability company and City dated December 14, 2016, as amended by the Amendment to Development Agreement dated December 18, 2017.

I. Bayfront Shuttle. Provide a shuttle service for a period of seventeen (17) years to transport Bayfront residents to and from the Main Project Site ("**Bayfront Shuttle**"). Developer shall fund the Bayfront Shuttle through the formation of a Transportation Management Association (TMA) unless coordination with the City as described below results in an agreement between the Parties to provide the required shuttle service in an alternate manner. The shuttle shall use one hundred percent (100%) electric vehicles if feasible, which shall mean that a technology that can run a single shuttle for twelve (12) hours without recharging is commercially reasonably available. If Developer believes using one hundred percent (100%) electric vehicles is infeasible, Developer shall notify City and Developer and City shall meet and confer to determine the lowest emission technology that is commercially reasonable and mutually acceptable to Developer and City and Developer shall employ such technology. In connection with the Bayfront Shuttle, Developer shall:

(1) Coordinate outreach on shuttle routing, frequency, and design with the City's outreach on shuttles to avoid duplicating service or inefficiency with transfers.

(2) Participate in the City's shuttle study as a stakeholder.

(3) Prepare an annual report on shuttle ridership and other metrics such as timeliness of shuttle arrivals so that City can evaluate the shuttle service.

(4) Use commercially reasonable efforts to coordinate with other developers and property owners in the area regarding the provision of shuttle services, subject to cost constraints and maintaining anticipated headways.

At the end of the seventeen (17) year period of operation of the Bayfront Shuttle, Developer and the City shall meet and confer to determine if there is continued demand for shuttle services and, if so, an appropriate approach for continuing such services, on what schedule, and how such services would be funded.

J. Bank. Developer shall construct a bank or credit union branch that includes retail service as well as one or more Automatic Teller Machines ("**Bank**").

K. Dining Venues. Developer shall construct 18,000 square feet of building space for by Eating Establishments and Drinking Establishments, as defined in the Applicable City Regulations ("**Dining Venues**"), which shall be constructed in two phases of 9,000 square feet each ("**First Phase Dining Venues**" and "**Second Phase Dining Venues,**" respectively). The Dining Venues shall consist of a range of dining options, from fast casual to sit-down restaurants, to serve residents and local employees.

L. Community Entertainment. Developer shall construct 25,000 square feet of building space for community entertainment offerings such as a cinema, live music, bowling, miniature golf, gaming, or similar use provided that gambling shall not be a permissible use ("**Community Entertainment**"), which shall be constructed in two phases of 12,500 square feet each ("**First Phase Community Entertainment**" and "**Second Phase Community Entertainment,**" respectively).

M. Pharmacy. Developer shall construct a space for pharmacy services to fill prescriptions and offer convenience goods ("**Pharmacy**") in one of the four locations identified in Exhibit F.

N. Town Square. Developer shall construct as part of the Project a "**Town Square**" as depicted Conceptually on Exhibit E-1 and Exhibit E-2 that will include areas for community gatherings, festivals, and farmers markets.

O. Excess Publicly Accessible Open Space. Developer shall construct as part of the Project publicly accessible open space improvements in excess of what is required by City Code and provide ongoing maintenance for these areas, consisting of a minimum of 74,030 square feet ("**Excess Publicly Accessible Open Space**"). The Excess Publicly Accessible Open Space may be constructed within the areas of the Community Park and/or the Dog Park and/or Parcel 3, each of which is depicted Conceptually on Exhibit E-2, attached hereto.

Section 5.2 Leasing of Space for Bonus Development Community Amenities. Developer shall make good faith, reasonable efforts to lease the space identified for the Grocery

Store as a Grocery Store, the space identified for the Bank as a Bank, the space identified for the Pharmacy as a Pharmacy, the spaces identified for Dining Venues as Dining Venues, and the spaces identified for Community Entertainment as Community Entertainment. Developer shall provide a report to the City describing its good faith efforts to lease the Project components listed under this Section 5.2 in conjunction with the issuance of the first permits for vertical construction and an updated report in conjunction with each annual review thereafter. With regard to the Grocery Store, the Bank, and the Pharmacy, Developer shall notify the City as soon as reasonably possible following the execution of a lease with an operator of any such space that such lease has been executed and identifying the name of the operator; provided, however, that nothing contained within this Section 5.2 shall require Developer to breach any confidentiality provisions contained in any such lease. If despite Developer's good faith, reasonable efforts, Developer is unable to lease the space identified for the Grocery Store as a Grocery Store, the space identified for the Bank as a Bank, the space identified for the Pharmacy as a Pharmacy, any of the spaces identified for Dining Venues as Dining Venues, or any of the spaces identified for Community Entertainment as Community Entertainment, then within twelve (12) months of the deadline for a final certificate of occupancy for that space as set forth in Exhibit F the Parties shall meet and confer to discuss potential alternative uses for such spaces that would provide community amenities on the list of community amenities set forth in Resolution No. 6360 or as agreed upon by Developer and City and to be memorialized in an Operating Memorandum.

Section 5.3 Public Benefits. If and to the extent that Developer commences construction of the Project, Developer must provide the public benefit contributions set forth in this Section 5.3.

A. Ongoing Job Training. Developer shall cause Meta to, for a period of five (5) years from and after the Effective Date:

(1) Work with a local training program to expand training services for residents of City and City of East Palo Alto;

(2) Create an ongoing quarterly series of career development workshops focusing on resume writing, interviewing skills, and how to find a job;

(3) Hold five (5) annual job fairs for residents of City and City of East Palo Alto. The program shall run annually for a period of five (5) years after the Effective Date, except for times of Meta hiring freezes, in which case the period shall be extended annually until five (5) job fairs have occurred;

(4) Promote local volunteer opportunities to its employees; and

(5) Host a local community organization fair.

B. Career Experience Program. Developer shall cause Meta to, for a period of five (5) years from and after the Effective Date, create a career experience program for high school students living in the City, East Palo Alto, or Redwood City. The program shall run for at least four (4) weeks each year and shall allow students to receive STEM career training and engage with Meta employees.

C. Dumbarton Rail. Developer shall provide stakeholder support (for example, sending support letters) for a rail transit project along the Dumbarton rail bridge, which would connect the Caltrain corridor at Redwood City to the East Bay ("**Dumbarton Rail Corridor Project.**") Developer shall have no obligation to provide financial support for the Dumbarton Rail Corridor Project.

D. Dumbarton Forward. Developer shall provide stakeholder support (for example, sending support letters) for Metropolitan Transportation Commission's strategies to improve efficiency and reduce delay on the State Route 84-Dumbarton Bridge-Bayfront Expressway corridor between Interstate 880 in Fremont and Marsh Road in Menlo Park ("**Dumbarton Forward.**") Developer shall have no obligation to provide financial support for Dumbarton Forward.

E. Bus Access. Developer shall coordinate with City to ensure that publicly operated buses have access to the Main Project Site (e.g., Menlo Park Midday, commute.org, SamTrans buses) and provide bus stops at reasonable locations within the Main Project Site, to be reasonably approved by City in conjunction with approval of Improvement Plans, for public transit systems.

F. Community Use of Publicly Accessible Open Space. Community use of the "**Publicly Accessible Open Space**", as depicted Conceptually in Exhibit E-2, shall be subject to compliance with the "**Willow Village Open Space Rules,**" which shall be approved by City prior to the first certificate of occupancy for the Project and shall include without limitation provisions: (a) permitting Developer or the owner's association to be formed pursuant to Section 5.3 to reasonably restrict or prohibit public access and use as reasonably necessary to (i) ensure security of the Project Site and persons or property within or around the Project Site and (ii) preclude activities that unreasonably disrupt non-public uses in the Project; (b) providing exclusive use by Developer for a specified number of private events; and (c) providing terms of use for community use of the Publicly Accessible Open Space.

G. Gap Payment. Developer shall make an annual payment of Three Hundred Eighty-Nine Thousand Dollars ($389,000), plus a CPI Adjustment each year ("**Gap Payment**") as provided in this Section 5.3G.

(1) The obligation to make a Gap Payment, if any, shall commence on the first of the month following the date that the certificate of occupancy for the third office building is issued ("**Third Office COO Issuance**") if a building permit for the Hotel has not been issued as of the Third Office COO Issuance ("**Gap Payment Commencement Date**"); provided, however, that the Gap Payment Commencement Date shall be the first of the month following the first anniversary of the Third Office COO Issuance if a building permit for the Hotel has been issued as of the Third Office COO Issuance. The first Gap Payment shall be prorated to reflect the months remaining in the Fiscal Year then in effect. Subsequent Gap Payments shall be due on July 1. Developer's obligation to make the Gap Payment shall apply to the period commencing on the Gap Payment Commencement Date and continuing until the earlier of (i) the Hotel has received a certificate of occupancy or (ii) the time period provided in Section 11.7 following the expiration or earlier termination of this Agreement (the "**Gap Payment Termination Date**") and there shall be no further obligation to make a Gap Payment

after the Gap Payment Termination Date, provided however that if the Hotel is not built but another use, as agreed below, is approved for and occupies the site, the Gap Payment shall be adjusted to be reduced by the amount of annual revenue projected by the City's economic consultant to result from the alternate use, and if the Gap Payment would thereby be reduced to zero then there shall be no further obligation to make a Gap Payment ("**Gap Payment Period**").

(2) If the Hotel has not received a certificate of occupancy within twenty-four (24) months after the date that the certificate of occupancy for the sixth office building is issued, Developer and City shall meet and confer to discuss a potential alternative productive and beneficial use for the parcel upon which the Hotel would have been constructed. The Parties understand and agree that such alternative productive and beneficial use may require further review under CEQA and may require Subsequent Project Approvals including Other Agency Subsequent Project Approvals.

(3) If at the Gap Payment Termination Date the Hotel has not received a certificate of occupancy, then Developer shall make a one-time net present value supplemental payment to the City (the "**Supplemental Gap Payment**"), which shall be calculated by applying the then in effect Gap Payment amount for a ten (10) year period at a three (3) percent escalation rate over such ten (10) year period and applying a net present value discount rate of seven and one-half percent (7.5%). Developer's obligation to make a Supplemental Gap Payment shall survive the termination of this Agreement until the obligation is satisfied, and the general survival time frame for public benefits set forth in Section 11.7 shall not apply to this obligation.

H. Willow Road Tunnel. Subject to receipt of all necessary Other Agency Approvals, Developer at its sole election may construct the new bike lanes and pedestrian paths, which would connect to existing facilities and the Bay Trail, as depicted Conceptually in Exhibit E-3 including the tunnel under Willow Road that would provide pedestrian and bicycle access to the Bayfront Area Meta Campuses ("**Willow Road Tunnel**"). Upon Developer's request, to the extent necessary to accommodate the Willow Road Tunnel portal and associated improvements, City shall cooperate with Developer in processing and approving a modification to the approved Conditional Development Permit for the Bayfront Expansion Campus in accordance with Section 6.1.1 – 6.1.3 thereof.

I. Community Use of MCS. Subject to Developer's security protocols and requirements and Developer's scheduling needs, exercised in good faith, and applicable deed restrictions imposed pursuant to Mitigation Measures in the Project EIR, Developer will provide access to the MCS to the City and/or non-profit or similar community organizations for up to six (6) community events per year ("**MCS Community Events**"). As part of the annual review pursuant to Article 6.1, Developer will advise the City of the number of MCS Community Events that occurred in the prior year. Other than providing police services ordinarily provided by the City, City shall have no obligation to provide security or contribute to the cost of security for MCS Community Events pursuant to this Section 5.3I.

J. Generators. If, at the time that generators are purchased, there is commercially available generator technology that is environmentally cleaner than diesel, and commercial generators with that technology can achieve the Project electrical load requirements and work with the electrical and mechanical infrastructure/service of the Project without

redesign, then the Project will use that technology if (1) the capital cost is not more than five percent (5%) more expensive (for the generator including any system modifications to accommodate that technology) of the bid price of the diesel generator meeting the project specifications and (2) the annual operational cost will not be more than five percent (5%) more expensive. At least 30 days prior to purchasing, Developer shall provide City with (i) a bid for the generator and any system modifications to accommodate the environmentally cleaner technology and, for purposes of comparison, a bid for a diesel generator and (ii) documentation showing the annual operational costs of the environmentally cleaner technology and, for purposes of comparison, documentation showing the annual operational costs of diesel.

K. Reduction of Daily Office Trips. Prior to issuance of the first building permit for the Project, the Parties will meet and confer to determine potential incentives that could be provided to Developer if Developer were able to further reduce daily office trips by an additional 10-15% below the trip cap set forth in the Project Approvals.

Section 5.4 Maintenance of Publicly Accessible Open Space. Except as provided in Section 5.5 below, Developer or another entity controlled by Meta, or an owners' association to be formed by Developer, shall own, operate, maintain and repair the Publicly Accessible Open Space in good and workmanlike condition, and otherwise in accordance with all Applicable Laws and any Project Approvals, all at no cost to City.

Section 5.5 Maintenance of Elevated Park Segment Over Willow Road and Willow Road Tunnel. If constructed, City shall own and Developer shall maintain and insure the Elevated Park Segment Over Willow Road and the Willow Road Tunnel at its sole cost and expense pursuant to agreements to be executed prior to construction of the Elevated Park Segment Over Willow Road and the Willow Road Tunnel, respectively. City shall have no obligation to fund maintenance of the Elevated Park Segment Over Willow Road and the Willow Road Tunnel. City shall have no liability for any Claims relating to the construction, condition, or maintenance of the Elevated Park Segment Over Willow Road or the Willow Road Tunnel except to the extent resulting from the gross negligence or willful misconduct of City. At Developer's sole cost and expense, Developer shall remove or replace the Elevated Park Segment Over Willow Road and the Willow Road Tunnel at the end of their respective useful lives.

Section 5.6 Sales Tax Point of Sale Designation. Developer shall use commercially reasonable 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, ("**Specified Materials**") to be used in connection with the initial construction and development of, or incorporated into, the Project (excluding (i) any subsequent remodeling or construction on the Property following final building permit sign off for each building to be constructed as part of the Project and (ii) furnishings, equipment, and personal property), to (a) obtain a use tax direct payment permit; and either (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 the Specified Materials used in the 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 county-wide pool. Developer shall instruct each of its subcontractors subject to this Section 5.6 to cooperate with City in its efforts to ensure the full local sales/use tax for the

Specified Materials 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, Developer shall provide City with an annual spreadsheet, which includes a list of all subcontractors subject to this Section 5.6, a description of all applicable work, and the dollar value of such subcontracts. City may use said spreadsheet to contact each subcontractor who may qualify for local allocation of use taxes to the City.

Section 5.7 BMR Housing True Up Payment. If following Commencement of Construction, Developer has no active building permits or has not passed any of the inspections required in connection with the building permits issued to Developer for a period of three (3) years for reasons other than a Force Majeure Delay ("**Pause of Construction**") and the number of "**BMR Units**" actually constructed at such point is less than the Proportionate Required BMR Units, as calculated below, then Developer shall pay a "**BMR Housing True Up Payment**" as provided in this Section 5.7. The BMR Housing True Up Payment shall be calculated as follows: (1) determine the then required number of BMR Units (the "**Proportionate Required BMR Units**") by (a) multiplying the total number of residential units constructed to date by fifteen percent (15%) (the "**Inclusionary Units**") and (b) adding the number of any required additional BMR Units correlated to commercial space constructed to date based on the value of the commercial in-lieu fee at the rate in effect as of the Effective Date using the same methodology that was used to determine the total number of BMR Units correlated to all commercial space in the Project at full buildout (the "**Linkage Equivalent Units**") (the sum of the Inclusionary Units and Linkage Equivalent Units equals the Proportionate Required BMR Units); (2) subtract the number of BMR Units constructed to date from the Proportionate Required BMR Units (the resulting difference shall be referred to herein as the "**Fee Paid BMR Units**"); and (3) multiply the number of Fee Paid BMR Units by Five Hundred Thousand Dollars ($500,000), subject to any annual escalator that is applied to the below market rate commercial linkage in-lieu fee in effect as of the Effective Date, with the resulting product being the amount of the BMR Housing True Up Payment. The BMR Housing True Up Payment shall be paid to the City and the City shall hold the BMR Housing True Up Payment in a segregated account and no portion of the BMR Housing True Up Payment shall be deposited into the City's Below Market Rate Housing Fund. City shall not spend any portion of the BMR Housing True Up Payment for any purpose for a period of three (3) years following the City's receipt of the BMR Housing True Up Payment (the "**BMR Fee Holding Period**"). If Developer secures an additional building permit and Commences Construction or passes an inspection required in connection with Developer's building permits ("**Resumption of Construction**") prior to the expiration of the BMR Fee Holding Period, then the City shall return the BMR Housing True Up Payment to Developer and Developer shall construct all future BMR Units to be constructed on site as described in the Project Approvals. In the event that a Resumption of Construction does not occur within the BMR Fee Holding Period, then the City may use the BMR Housing True Up Payment for affordable housing purposes as permitted under the City's Below Market Rate Housing Program, and Developer shall have no further obligation to construct any of the Fee Paid BMR Units and Developer shall only be obligated to construct future required BMR Units on site (i.e., the proposed number of BMR Units in the project less the number of BMR Units constructed previously and the Fee Paid BMR Units). If there is a Resumption of Construction after the BMR Fee Holding Period, and the City Council and/or City Manager have not approved expenditure of the BMR Housing True Up Payment for a specific affordable housing project or program, then Developer may request that the BMR Housing True Up Payment be returned to Developer. Upon receipt of said request, Developer and City shall meet and confer regarding

any planned or proposed use by the City of the BMR Housing True Up Payment. Following said meet and confer, Developer may, in its sole discretion, confirm its request that the BMR Housing True Up Payment be returned to Developer, in which case the City shall return the BMR Housing True Up Payment to Developer and Developer shall construct all future BMR Units to be constructed on site as described in the Project Approvals. If there is another Pause of Construction after any Resumption of Construction, Developer shall be obligated to make another BMR Housing True Up Payment calculated pursuant to this Section 5.7.

Section 5.8 Hamilton Avenue Realignment. Subject to receipt of all necessary Other Agency Approvals, Developer shall realign Hamilton Avenue in accordance with the Project Approvals. Developer shall make good faith efforts to obtain such Other Agency Approvals for the realignment of Hamilton Avenue. In the event Developer does not receive such Other Agency Approvals, Developer shall provide written notice to City and Developer shall be permitted to construct the Project, as reconfigured in accordance with Sheet G4.08 of the Willow Village Master Plans.

ARTICLE 6 ANNUAL REVIEW

Section 6.1 Annual Review.

A. As required by California Government Code Section 65865.1 and the Development Agreement Regulations, City and Developer shall review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project every twelve (12) months to determine good faith compliance with this Agreement. Specifically, City's annual review shall be conducted for the purposes of determining good faith compliance by Developer with its obligations under this Agreement.

B. The annual review shall be conducted as provided in the Development Agreement Law and City's Development Agreement Regulations as follows:

(1) The Director of Community Development shall provide each Developer notice of an annual review hearing before the Planning Commission, which shall be scheduled at least thirty (30) days after the date of the notice. The notice shall, to the extent required by law, include a statement that any review may result in amendment or termination of this Agreement. At said hearing, each Developer must demonstrate, and shall bear the burden of proof of, good faith compliance with the terms of this Agreement. The Planning Commission shall determine upon the basis of substantial evidence whether or not a Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the Planning Commission may be appealed to the City Council. Each Developer shall be responsible for its own annual review process; provided, however, that multiple annual reviews may occur at the same Planning Commission hearing. In accordance with Section 10.2, no default of one Developer shall have any effect on the compliance of a different Developer.

(2) If the Planning Commission (if its finding is not appealed) or City Council finds that Developer has not complied in good faith with the terms and conditions of this Agreement, the City shall commence proceedings under ARTICLE 11 by providing a written Notice of Default under Section 11.1 to such Developer describing: (a) such failure and that such

failure constitutes a Default; (b) the actions, if any, required by Developer to cure such Default; and (c) the time period within which such Default must be cured. In accordance with Section 11.1, if the Default can be cured, Developer shall have a minimum of thirty (30) days after the date of such notice to cure such Default, or in the event that such Default cannot be cured within such thirty (30) day period, if Developer shall commence within such thirty (30) day time period the actions necessary to cure such Default and shall be diligently proceeding to complete such actions necessary to cure such Default, Developer shall have such additional time period as may be required by Developer within which to cure such Default.

(3) If Developer fails to cure a Default within the time periods set forth above, the City Council may amend or terminate this Agreement as provided below.

C. If, upon a finding under Section 6.1, subsection B of this Agreement and the expiration of the cure period specified in Section 6.1, subsection B without Developer having cured a Default, the City determines to proceed with amendment or termination of this Agreement, the City shall give written notice to Developer of its intention so to do. The notice shall be given at least fifteen (15) days before the scheduled hearing and shall contain:

(1) The time and place of the hearing before the City Council;

(2) A statement that City proposes to amend or terminate the Agreement;

(3) Such other information as is reasonably necessary to inform Developer of the nature of the proceeding.

D. At the time and place set for the hearing on amendment or termination, Developer shall be given an opportunity to be heard, and Developer shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. If the City Council finds, based upon substantial evidence, that Developer has not complied in good faith with the terms or conditions of this Agreement, the City Council may terminate this Agreement pursuant to Section 11.2. The decision of the City Council shall be final, subject to judicial review pursuant to Section 1094.5 of the California Code of Civil Procedure.

E. 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 Agreement nor shall Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

F. If, after an annual review, City finds Developer has complied in good faith with this Agreement, City, promptly following Developer's request, shall issue to Developer a letter of compliance in recordable form certifying that Developer has so complied through the period of the applicable annual review.

ARTICLE 7 MORTGAGEE PROTECTION

Section 7.1 Mortgagee Protection. This 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 Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the 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 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 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 Agreement nor to construct any improvements thereon or institute any uses other than those uses and improvements provided for or authorized by this Agreement and the Project Approvals.

Section 7.3 Notice of Default to Mortgagee; Right to Cure. With respect to any Mortgage granted by Developer as provided herein, so long as any such Mortgage shall remain unsatisfied of record and Mortgagee has provided City with written notice requesting that City send Mortgagee notices of Default and specifying the address for service thereof, the following provisions shall apply:

A. City, upon serving Developer any notice of Default, 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 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 (i) the date of Mortgagee's receipt of the notice referred to in Section 7.3A above, or (ii) 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 (a) if such Default is not capable of being cured within the timeframes set forth in this Section 7.3B 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 (b) 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 12.5, 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 12.5, 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 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 7.3.

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 Agreement that are required by lenders for the acquisition and construction of the Project 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.

ARTICLE 8 AMENDMENT OF AGREEMENT AND EXISTING APPROVALS

Section 8.1 Amendment of Agreement By Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the Parties hereto or their successors-in-interest or assigns, and then only in the manner provided for in the Development Agreement Statute and Development Agreement Regulations.

Section 8.2 Requirement for Writing. No modification, amendment or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing that refers expressly to this Agreement and is signed by duly authorized representatives of both Parties or their successors. A copy of any change shall be provided to the City Council within thirty (30) days of its execution.

Section 8.3 Amendments to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute as those provisions existed as of the Agreement Date. No amendment or addition to those provisions that would materially affect the interpretation or enforceability of this Agreement shall be applicable to this 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 a change in 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 new law or regulation and to determine the effect such modification or suspension would have on the purposes and intent of this Agreement. Following the meeting between the Parties, the provisions of this 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 new law or regulation. If such amendment or change is permissive (as opposed to mandatory), this Agreement shall not be affected by same unless the Parties mutually agree in writing to

amend this Agreement to permit such applicability. Developer and/or City shall have the right to challenge any new law or regulation preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

Section 8.4 Amendments to Project Approvals. Project Approvals (except for this Agreement, the amendment process for which is set forth in Section 8.1 through 8.2) may be amended or modified from time to time, but only at the written request of Developer or with the written consent of Developer at its sole discretion. All amendments to the Project Approvals shall automatically become part of the Project Approvals. The permitted uses of the Property or portion thereof, the maximum density and/or 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 conditions, terms, restrictions and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development as set forth in all such amendments shall be automatically vested pursuant to this Agreement, without requiring an amendment to this Agreement. Amendments to the Project Approvals shall be governed by the Project Approvals and the Applicable Law. City shall not request, process or consent to any amendment to the Project Approvals, or applicable portion thereof, without Developer's prior written consent in Developer's sole discretion.

Section 8.5 Administrative Amendments of Project Approvals. Upon the request of Developer for an amendment or modification of any of the Project Approvals (except for this Agreement, the amendment process for which is set forth in Section 8.1 through 8.2 herein, and the Willow Village CDP, the change or amendment process for which is set forth in Section 8 thereof), the City Manager or his/her designee shall determine: (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (b) whether the requested amendment or modification substantially conforms with the material terms of this Agreement and the Applicable Law and may be processed administratively. If the City Manager or his/her designee finds that the requested amendment or modification is both minor and substantially conforms with the material terms of this Agreement and the Applicable Law, the amendment or modification shall be determined to be an "**Administrative Amendment**," and the City Manager or his/her designee may approve the Administrative Amendment, without public notice or a public hearing. Without limiting the generality of the foregoing, lot line adjustments, minor reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, variations in the location of structures that do not substantially alter the design concepts of the Project, substitution of comparable landscaping for any landscaping shown on any development plan or landscape plan, variations in the location or installation of utilities and other infrastructure connections and facilities that do not substantially alter design concepts of the Project, and minor adjustments to a subdivision map or the Property legal description shall be deemed to be minor amendments or modifications. Any request of Developer for an amendment or modification to a Project Approval that is determined not to be an Administrative Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.

Section 8.6 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between City and Developer and development of the Property hereunder

may demonstrate that refinements and clarifications are appropriate with respect to the details or timing of performance of City and Developer. If and when, from time to time, during the Term of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer may effectuate such clarifications through operating memoranda approved by City and Developer (each, individually an "**Operating Memorandum**" and collectively "**Operating Memoranda**"), which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by City and Developer. No such Operating Memorandum shall constitute an amendment to this Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section 8.6 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 8.1 above. The City Manager shall be authorized to execute any Operating Memorandum hereunder on behalf of City.

Section 8.7 Amendment to Incorporate Additional Property. Developer has an equitable reversionary interest in portions of Hamilton Avenue to be abandoned by the City (the "**Hamilton ROW Parcel**") and an equitable interest in a portion of a parcel that is owned by Chevron USA (the "**Chevron Parcel**") pursuant to an executed purchase and sale agreement between Developer and the owner of the Chevron Parcel. Upon Developer acquiring a fee interest in the Chevron Parcel or the Hamilton ROW Parcel, or both, City and Developer shall enter into an Operating Memorandum to subject the Chevron Parcel or the Hamilton ROW Parcel, or both, to this Agreement and amend the map of the Property attached hereto as Exhibits A-1-1 and A-1-2 and the legal description of the Property attached hereto as Exhibits A-2-1 and A-2-2 to add the Chevron Parcel or the Hamilton ROW Parcel, or both, to the legal description for this Agreement, which Operating Memorandum shall be recorded in the Official Records of San Mateo County.

Section 8.8 CEQA. In connection with its consideration and approval of the Existing Approvals, the City has prepared and certified the Project EIR, which evaluates the environmental effects of the Project, and has imposed all feasible mitigation measures to reduce the significant environmental effects of the Project. The Parties acknowledge that certain Subsequent Project Approvals may legally require additional analysis under CEQA. Nothing contained in this Agreement is intended to prevent or limit the City from complying with CEQA. In acting on Subsequent Project Approvals, City will rely on the Project EIR to the fullest extent permissible by CEQA. In the event supplemental or additional review is required for a Subsequent Project Approval, City shall limit such supplemental or additional review to the scope of analysis mandated by CEQA and shall not impose new mitigation measures except as legally required.

ARTICLE 9 COOPERATION AND IMPLEMENTATION

Section 9.1 Subsequent Project 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 Project Approvals**"). The Subsequent Project Approvals may include, without limitation, the following: grading permits, building permits, sewer and water connection permits, certificates of occupancy, lot line adjustments, site plans,

development plans, land use plans, building plans and specifications, final maps, parcel maps and/or subdivision maps, conditional use permits, variances, architectural control plans, demolition permits, improvement agreements, encroachment permits, and any modifications or amendments to any of the foregoing or any Existing Approvals. At such time as any Subsequent Project Approval applicable to the Property is approved by the City, then such Subsequent Project Approval shall become subject to all the terms and conditions of this Agreement applicable to Project Approvals and shall be treated as a "Project Approval" under this Agreement.

Section 9.2 Scope of Review of Subsequent Project Approvals. In exercising its discretion in connection with consideration of Subsequent Project Approvals, City agrees that City shall not revisit the fundamental policy decisions reflected by the Existing Approvals or impose any Exactions that would conflict with the Applicable City Regulations or the Existing Approvals as set forth in Section 3.1 herein or any Project Approvals unless expressly permitted by Sections 4.3A-D or 9.8.

Section 9.3 Processing Applications for Subsequent Project Approvals.

A. Developer acknowledges that City cannot begin processing applications for Subsequent Project Approvals until Developer submits applications and responses to City comments thereto on a timely basis. Developer acknowledges that for the City to process applications, Developer needs to (i) provide to City in a timely manner and in the manner required under Applicable Law any and all Processing Fees, documents, materials, applications, plans, and other information reasonably necessary for City to carry out its review and processing obligations; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner and in the manner required under Applicable Law all such documents, applications, plans, information, and other materials required under Applicable Law.

B. Upon submission by Developer of all appropriate applications and Processing Fees for any Subsequent Project Approval, City shall accept, review, and use reasonable efforts to expeditiously process Developer's applications and requests for Subsequent Project Approvals in connection with the Project in good faith and in a manner that complies with and is consistent with Applicable Law and the Project Approvals and this Agreement. The City shall approve any application or request for any Subsequent Project Approval that substantially complies with and is substantially consistent with the Project Approvals. The Parties shall cooperate with each other and shall use diligent, good faith efforts to cause the expeditious review, processing, and action on the Subsequent Project Approvals. City shall, to the full extent allowed by Applicable Law, 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 Project Approval applications including: (i) providing at Developer's expense and subject to Developer's request and prior approval, reasonable overtime staff assistance, additional staff and/or staff consultants for processing of Subsequent Project Approval applications as may be necessary to meet Developer's reasonable schedule considerations; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such pending Subsequent Project Approval application.

C. If City so requests in writing after submittal of an application for a demolition permit, or earlier if otherwise agreed by Developer in its reasonable discretion, Developer shall fund (i) a third party consultant or (ii) a member of City staff that is primarily dedicated to the Project Manager functions under this Section 9.3C (and any time spent on other functions shall not be billed to the Project under this Section), to be selected and retained by City and subject to Developer's reasonable approval, to assist City in managing the implementation of the Project Approvals and this Agreement as well as facilitating the processing of Subsequent Project Approvals; receive inquiries related to the Project and coordinate with Developer and City departments regarding appropriate responses thereto during development of the Project; and promote accessibility, predictability, and consistency across City departments (the "**Project Manager**"). Developer shall use commercially reasonable efforts to provide at least ninety (90) days advance written notice of its intent to submit a demolition permit.

(1) City shall determine, in City's reasonable discretion after consulting with Developer, the need for the Project Manager, the initial budget (including a reasonable initial deposit amount to cover initial hiring and reasonable compensation costs, which shall be consistent with market costs for similar services, associated with the Project Manager (the "**Initial Deposit**")), the scope of work, and the schedule of work for the Project Manager. Developer shall deposit the Initial Deposit within sixty (60) days of City's written request. City shall utilize the Initial Deposit to pay for the initial cost of the Project Manager and Developer shall pay future invoices as set forth in Section 9.3C(3) below. At such intervals as the Parties shall agree in writing, subsequent budgets, schedules, and scopes of work for the Project Manager shall be determined by the City in its reasonable discretion after consulting with Developer. City shall provide written notice to Developer prior to entering into any contract with a third party to provide the Project Manager services under this Section 9.3C.

(2) In the event that Developer reasonably disputes any budget, scope, schedule, or selection of the Project Manager proposed by City, Developer shall provide written notice to City of its objections and the Parties shall cooperate in good faith to resolve the dispute pursuant to Section 11.6. If the Parties are unable to resolve the dispute, then the Parties shall participate in a mediation to be conducted at the Judicial Arbitration and Mediation Services (JAMS) in San Francisco, CA. The mediation shall be before a single mediator and, unless otherwise agreed by the Parties, shall not exceed two (2) days in length. The costs of any such mediation shall be borne equally by the Parties. If the dispute is not resolved at mediation, the disputed budget, scope, schedule, or selection of the Project Manager proposed by City shall stand and Developer shall have the right to seek mandamus or other equitable relief as may be available under applicable law.

(3) City shall provide Developer on a monthly or quarterly basis (as mutually agreed to by the Parties in writing) an invoice which shall include: the Project Manager's hourly rate, the number of hours the Project Manager worked on Project activities during the previous month or quarter (as mutually agreed to by the Parties in writing), and a brief, non-confidential description of the work the Project Manager performed on Project activities. Developer shall submit payment of any invoice within sixty (60) days of receipt of City's invoice.

(4) Further details regarding the process and timing for billing and

payment of the City's costs associated with the Project Manager shall be documented in an Operating Memorandum to be entered into within sixty (60) days of City's receipt of Developer's notice provided pursuant to the opening paragraph of Section 9.3C.

(5) Developer may, from time to time, but in no event more than once in any twelve (12)-month period, at Developer's sole cost and expense, request an audit of the City invoices described in this Section and non-confidential supporting documentation therefor, provided any such audit is initiated within one (1) year after Developer's receipt of the invoice. If an audit reveals that the actual costs were less than the amount of any City invoice provided in accordance with this Section, then within sixty (60) days following receipt of the invoice or audit results, Developer shall provide notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile or resolve the dispute as soon as practicable.

(6) Developer's obligation to fund the costs of the Project Manager shall terminate upon Completion of Construction of the last Improvement for the Project. In addition, on thirty (30) days' prior written notice from Developer of an anticipated temporary suspension of at least ninety (90) days of the implementation of the Project Approvals and processing of Subsequent Project Approvals, Developer's obligation to fund the costs of the Project Manager shall be suspended until Developer resumes the implementation of the Project Approvals or processing of Subsequent Project Approvals, at which time Developer's obligation to fund the costs of the Project Manager shall resume. Developer shall provide City with at least sixty (60) days' written notice of its intent to resume implementation of the Project Approvals or processing of Subsequent Project Approvals. City will use good faith efforts in consultation with Developer to locate an alternate Project Manager within a reasonable period of time in the event that the Project Manager in place prior to the suspension (i) will not be used, as determined in City's reasonable discretion, or (ii) declines to act as Project Manager.

Section 9.4 Other Agency Subsequent Project 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 Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this 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 law, in Developer's efforts to obtain, as may be required, Other Agency Subsequent Project 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 Project Approvals and the Project Approvals.

Section 9.5 Implementation of Necessary Mitigation Measures. Developer shall, at its sole cost and expense, comply with the Project MMRP requirements as applicable to the Property and Project.

Section 9.6 Cooperation in the Event of Legal Challenge.

A. The filing of any third-party lawsuit(s) against City or Developer relating to this Agreement, the Project Approvals or construction of the Project shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Project

Approvals, unless a court order prevents 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 challenging the validity of any of the Project 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. To the extent Developer desires to contest or defend such Litigation Challenge, (i) 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; (ii) City may, in its sole discretion, elect to be separately represented by the legal counsel of its choice, selected after consultation with Developer, in any action or proceeding, with the reasonable costs of such representation to be paid by Developer; (iii) Developer shall reimburse City, within forty-five (45) days following City's written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge, including City's reasonable administrative, legal, and court costs and City Attorney oversight expenses; and (iv) 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. Upon request by Developer, City shall enter into a joint defense agreement in a form reasonably acceptable to the City Attorney and Developer 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; provided, however, that Developer may settle Litigation without consent of the City if the settlement does not require any changes to any Project Approvals or action by the City. If the terms of the proposed settlement would constitute an amendment or modification of any Project Approvals, the settlement shall require such amendment or modification to be approved by City in accordance with Applicable Law, and City reserves its full discretion in accordance with Applicable Law 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.

Section 9.7 Revision to Project. In the event of a court order issued as a result of a successful Litigation Challenge, 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 avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Project Approvals, or (ii) any conflict with the Project Approvals or frustration of the intent or purpose of the Project Approvals.

Section 9.8 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, (i) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement, and (ii) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

Section 9.9 Defense of Agreement. City, at Developer's expense, shall take all actions that are necessary or advisable to uphold the validity and enforceability of this Agreement. If this Agreement is adjudicated or determined to be invalid or unenforceable, City agrees, subject to all legal requirements, to consider modifications to this Agreement acceptable to Developer to render this Agreement valid and enforceable to the extent permitted by Applicable Law. In the event of a Litigation Challenge, Developer may terminate this Agreement and abandon the Project and, following such termination, Developer shall have no further obligation to pay for the costs of defense of this Agreement other than incurred by the City in seeking to have any such Litigation Challenge dismissed as moot.

ARTICLE 10 ASSIGNMENT AND PILOT AGREEMENT

Section 10.1 Transfers and Assignments. Developer shall have the right to sell, assign or transfer any portion of the Property without the consent of City; provided, however, in no event shall the rights, duties and obligations conferred or imposed upon Developer pursuant to this Agreement be at any time transferred in whole or part ("**Transfer**") except through a transfer of the Property or portion thereof and no such Transfer of this Agreement shall be made prior to substantial completion of the Project without the prior written consent of City Manager, not to be unreasonably withheld, conditioned, or delayed, in accordance with the provisions of this Article 10.Upon Developer's request, City, at Developer's expense, shall cooperate with Developer and any proposed transferee of any portion of the Property to allocate and Transfer rights, duties and obligations under this Agreement and the Project Approvals between the transferred Property and the retained Property.

Developer shall notify City of any proposed Transfer of this Agreement at least sixty (60) days prior to completing any Transfer. City shall approve or disapprove the requested Transfer of this Agreement with respect to any portion of the Property within thirty (30) days after receipt of a written request for approval from Developer, together with such financial information and other documentation that City determines is reasonably necessary to evaluate the proposed transaction and the proposed assignee's experience, reputation and qualifications. City shall not unreasonably withhold, condition or delay its approval of a proposed Transfer of this Agreement to a reputable assignee who has (i) at least ten (10) years' experience in the development, ownership, operation and management of similar-size or larger developments of the type to be undertaken on the transferred portion of the Property without any record of material violations of Applicable Laws, and (ii) the financial resources and wherewithal to develop and effectively manage the Project or pertinent component of the Project. The approved assignee shall be required to assume Developer's rights and obligations under this Agreement with respect to the transferred portion of the Property pursuant to an assignment and assumption agreement in substantially the same form attached hereto as Exhibit G. No later than ten (10) business days after the date the assignment becomes effective, Developer shall deliver to City a conformed copy of the fully executed and recorded assignment and assumption agreement.

Notwithstanding anything to the contrary provided herein, Mercy Housing is preapproved as a transferee of this Agreement with respect to the senior affordable housing component of the Project.

Section 10.2 Release upon Transfer. Upon the Transfer of all or any of Developer's rights and interests under this Agreement pursuant to this Article 10, Developer shall

automatically be released from its obligations and liabilities under this Agreement with respect to that portion of the Property transferred and the rights and/or obligations 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 Agreement, provided that (i) Developer has provided to City written Notice of such Transfer, and (ii) the transferee executes and delivers to City a written agreement 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 Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee. Except as otherwise provided in this Agreement, 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 the rights and/or obligations under this Agreement assumed by such transferee, and any amendment to this Agreement between City and a transferor or a transferee shall only affect the portion of the Property owned by and the rights and/or obligations retained and/or assumed 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 12.4 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.

Section 10.3 PILOT. Prior to the issuance of the first building permit for the Project or any transfer of any portion of the Property, whichever is earlier, Developer and City shall enter into a Payment In Lieu of Taxes Agreement ("**PILOT Agreement**") to be recorded in the Official Records of the County of San Mateo against the Main Project Site and Developer shall cause LLBG Properties, LLC to enter into a PILOT Agreement to be recorded in the Official Records of the County of San Mateo against the Hamilton Parcels. Each PILOT Agreement shall require that if any portion of the Property is sold or transferred to an entity that applies for and is granted a "welfare exemption" pursuant to Section 214 of the California Revenue and Taxation Code, or any successor provision, or any other exemption from the payment of real or personal property taxes of any nature, Developer or LLBG Properties, LLC or the proposed transferee, as applicable, must pay annually to the City, a payment in lieu of taxes in an amount equal to the portion of the real and personal property tax levy the City would have received but for the exemption as reasonably determined by the City and as increased annually by the amount permitted under the provisions of Article XIIIA, Section 2, of the California Constitution. Notwithstanding the foregoing, nothing in this Section 10.3 shall apply to any transfer to a non-profit developer for the purpose of constructing the stand-alone senior affordable component of the project.

ARTICLE 11 DEFAULT; REMEDIES; TERMINATION

Section 11.1 Breach and Default. Subject to extensions of time under Section 2.2B or by mutual consent in writing, and subject to a Mortgagee's right to cure under Section 7.3, failure by a Party to perform any material action or covenant required by this Agreement (not including any failure by Developer to perform any term or provision of any other Project

Approval) within thirty (30) days following receipt of written Notice from the other Party specifying the failure shall constitute a "**Default**" under this 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. Any 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 Agreement. 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 purposes of (a) termination of this Agreement, (b) institution of legal proceedings with respect thereto, or (c) issuance of any approval with respect to the Project. The waiver by either Party of any Default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

Section 11.2 Termination. In the event of a Default by a Party, the non-defaulting Party shall have the right to institute legal proceedings pursuant to Section 11.3 and/or terminate this Agreement effective immediately upon giving notice of intent to terminate. Termination of this Agreement shall be subject to the provisions of Section 11.7 hereof. In the event that this Agreement is terminated pursuant to Section 6.1 herein 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 Agreement shall immediately be reinstated as though it had never been terminated.

Section 11.3 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 Agreement.

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 11.4 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 11.5 No Damages. In no event shall a Party, or its boards, commissions, officers, agents or employees, be liable in damages for any Default under this Agreement, it

being expressly understood and agreed that the sole legal remedy available to a Party for a breach or violation of this Agreement by the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement, including, but not limited to, obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. 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 Agreement by the other Party.

Section 11.6 Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which is not provided for by this Agreement or Applicable Law, a Party shall, at the request of the other 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. Nothing in this Section 11.6 shall prohibit either Party from pursuing any available remedies, including injunction relief, during the period of such discussions.

Section 11.7 Surviving Provisions. In the event this Agreement expires or is terminated, neither Party shall have any further rights or obligations hereunder, except for those obligations of Developer set forth in Section 3.5 (Life of Project Approvals), Section 4.6 (Prevailing Wage Requirements), Section 5.3 (Public Benefits) (provided, however, Public Benefits under Section 5.3 shall survive for seventeen (17) years following the Effective Date or such earlier or later date as such obligations terminate pursuant to Section 5.3), Section 5.7 (BMR Housing True Up Payment), Section 9.6 (Cooperation in the Event of Legal Challenge; provided, however, Developer shall have no obligation to defend any litigation if this Agreement has been terminated), or expressly set forth herein as surviving the expiration or termination of this Agreement. The termination or expiration of this Agreement shall not affect the validity of the Project Approvals (other than this Agreement).

Section 11.8 Effects of Litigation. In the event litigation is timely instituted, and a final judgment is obtained, which invalidates in its entirety this Agreement, neither Party shall have any obligations whatsoever under this Agreement, except for those obligations which by their terms survive termination hereof.

Section 11.9 California Claims Act. Compliance with the procedures set forth 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 MISCELLANEOUS PROVISIONS

Section 12.1 Incorporation of Recitals, Exhibits and Introductory Paragraph. The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals and the Exhibits attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

Section 12.2 Severability. If any term or provision of this Agreement, or the application of any term or provision of this 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 Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual written agreement of the Parties.

Section 12.3 Construction. Each reference herein to this Agreement or any of the Existing Approvals or Subsequent Project Approvals shall be deemed to refer to the Agreement, Existing Approval or Subsequent Project Approval as it may be amended from time to time in accordance with the terms of this Agreement, whether or not the particular reference refers to such possible amendment. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement. This 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 Agreement. Unless the context clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the others; (iii) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (iv) "or" is not exclusive; (v) "include," "includes" and "including" are not limiting and shall be construed as if followed by the words "without limitation;" (vi) "days" means calendar days unless specifically provided otherwise; and (vii) references to Sections shall be deemed to refer to Sections in this Agreement unless specifically provided otherwise.

Section 12.4 Covenants Running with the Land. Except as otherwise more specifically provided in this Agreement, this 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 or portion thereof, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code section 65868.5.

Section 12.5 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. 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

(i) actual receipt by any of the addressees designated below as the Party to whom Notices are to be sent, or (ii) 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 respective addresses set forth below.

To City:	City of Menlo Park Community Development 701 Laurel Street Menlo Park, CA 94025 Attn: Community Development Director
	and
	City of Menlo Park Community Development 701 Laurel Street Menlo Park, CA 94025 Attn: City Manager
With a copy to:	Burke, Williams & Sorensen, LLP 181 Third Street Suite 200 San Rafael, CA 94901-6587 Attn: Nira Doherty
To Developer:	c/o Meta Platforms, Inc. 1 Hacker Way Menlo Park, CA 94025 Attention: Facilities, Real Estate Development
With a copy to:	c/o Meta Platforms, Inc. 1 Hacker Way Menlo Park, CA 94025 Attention: Real Estate Counsel

Section 12.6 Counterparts and Exhibits; Entire Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original. This 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 12.7 Recordation of Agreement. Pursuant to California Government Code Section 65868.5, no later than ten (10) days after the Effective Date, the City Clerk shall record

an executed copy of this Agreement in the Official Records of the County of San Mateo. Thereafter, if this Agreement is terminated, modified or amended, the City Clerk shall record notice of such action in the Official Records of the County of San Mateo.

Section 12.8 No Joint Venture or Partnership. It is specifically understood and agreed to by and between the Parties hereto that: (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any public improvements constructed by Developer as part of the Project until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Existing Approvals or Subsequent Project Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, Existing Approvals, Subsequent Project Approvals, and Applicable Law; and (iv) 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 12.9 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this 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 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 12.10 California Law; Venue. This 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 San Mateo, 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.

Section 12.11 City Approvals and Actions. Whenever reference is made herein to an action or approval to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of City, unless specifically provided otherwise or the context requires otherwise. Wherever this Agreement permits the City Manager to exercise his/her discretion with respect to any of the terms and provisions herein, including but not limited to approval of an Extension Request, modifications to the timing set forth in Exhibit D and Exhibit F, Administrative Amendments, operating memoranda, and approval of a Transfer, as otherwise permitted in this Agreement, the City Manager shall advise the City Council of such exercise of discretion and where practical shall consult with the Mayor and/or the City Council prior to exercising such discretion. Notwithstanding such requirement to inform and consult with the

City Council, Developer may rely on any writing evidencing the exercise of discretion by the City Manager.

Section 12.12 City Funding for Affordable Housing. Notwithstanding anything to the contrary in this Agreement, City shall have no obligation to contribute any monies from its Below Market Rate Housing Fund to finance affordable housing for the Project. Notwithstanding the foregoing, in the event that Developer provides any funding to the City for the senior affordable parcel to qualify for the County of San Mateo Affordable Housing Fund, or similar program that requires local matching funds, then such funds shall not be deposited into the City's Below Market Rate Housing Fund and shall be used in accordance with the local matching fund requirement to advance affordable housing development associated with the Project.

Section 12.13 Estoppel Certificates. A Party may, at any time during the Term of this 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, (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, or if amended, identifying the amendments; (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults; and (iv) 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 twenty (20) days following the receipt of Notice requesting such certificate. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that this 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 12.14 No Third-Party Beneficiaries. City and Developer hereby renounce the existence of any third-party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third-party beneficiary status.

Section 12.15 Signatures. Each Party represents that the individuals executing this Agreement on behalf of such Party have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City and that all necessary board of directors', shareholders', partners', city councils' or other approvals have been obtained.

Section 12.16 Further Actions and Instruments. Each Party to this 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 Agreement, subject to satisfaction of the conditions of this 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 Agreement to carry out the intent and to fulfill the provisions of this Agreement.

Section 12.17 Limitation on Liability. In no event shall: (a) any partner, officer, director, member, shareholder, employee, affiliate, manager, representative, or agent of Developer or any general partner of Developer or its general partners be personally liable for any breach of this Agreement by Developer, or for any amount which may become due to City under the terms of this Agreement; or (b) any member, officer, agent or employee of City be personally liable for any breach of this Agreement by City or for any amount which may become due to Developer under the terms of this Agreement.

[Remainder of page left intentionally blank – signature page follows]

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

CITY:

CITY OF MENLO PARK, a California municipal corporation

By: _____
~~Justin Murphy, City Manager~~
[signature must be notarized]

APPROVED AS TO FORM:

By: _____
Nira Doherty, City Attorney

ATTEST:

By: _____
___, City Clerk

DEVELOPER:

PENINSULA INNOVATION PARTNERS, LLC, a Delaware limited liability company

By: _____
Name: JOHN TENANES
Title: V.P. REAL ESTATE
[signature must be notarized]

INB2714952

ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Mateo)

On 01/30/2023, before me, Matt G Miller, (Name of Notary),

notary public, personally appeared John Tenanes
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Signature)

MATT G. MILLER
Comm. #2355268-Mfr. #NNA1
Notary Public
CALIFORNIA
San Francisco County
My Comm. Exp. May 18, 2025

* * * * * * * * * * * * * *

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

CITY:

CITY OF MENLO PARK, a California municipal corporation

By: _____
Jen Wolosin, Mayor
[signature must be notarized]

APPROVED AS TO FORM:

By: _____
Nira Doherty, City Attorney

ATTEST:

By: _____
Judi Herren, City Clerk

DEVELOPER:

PENINSULA INNOVATION PARTNERS, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____
[signature must be notarized]

INB2714952

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Mateo)

On March 3, 2023, before me, Sarah Sandoval, Notary Public,
(Name of Notary)

notary public, personally appeared Jen Wolasin
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SARAH ELIZABETH SANDOVAL
Notary Public - California
San Mateo County
Commission # 2373833
My Comm. Expires Sep 4, 2025

(Notary Signature)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me,_____,
(Name of Notary)

notary public, personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

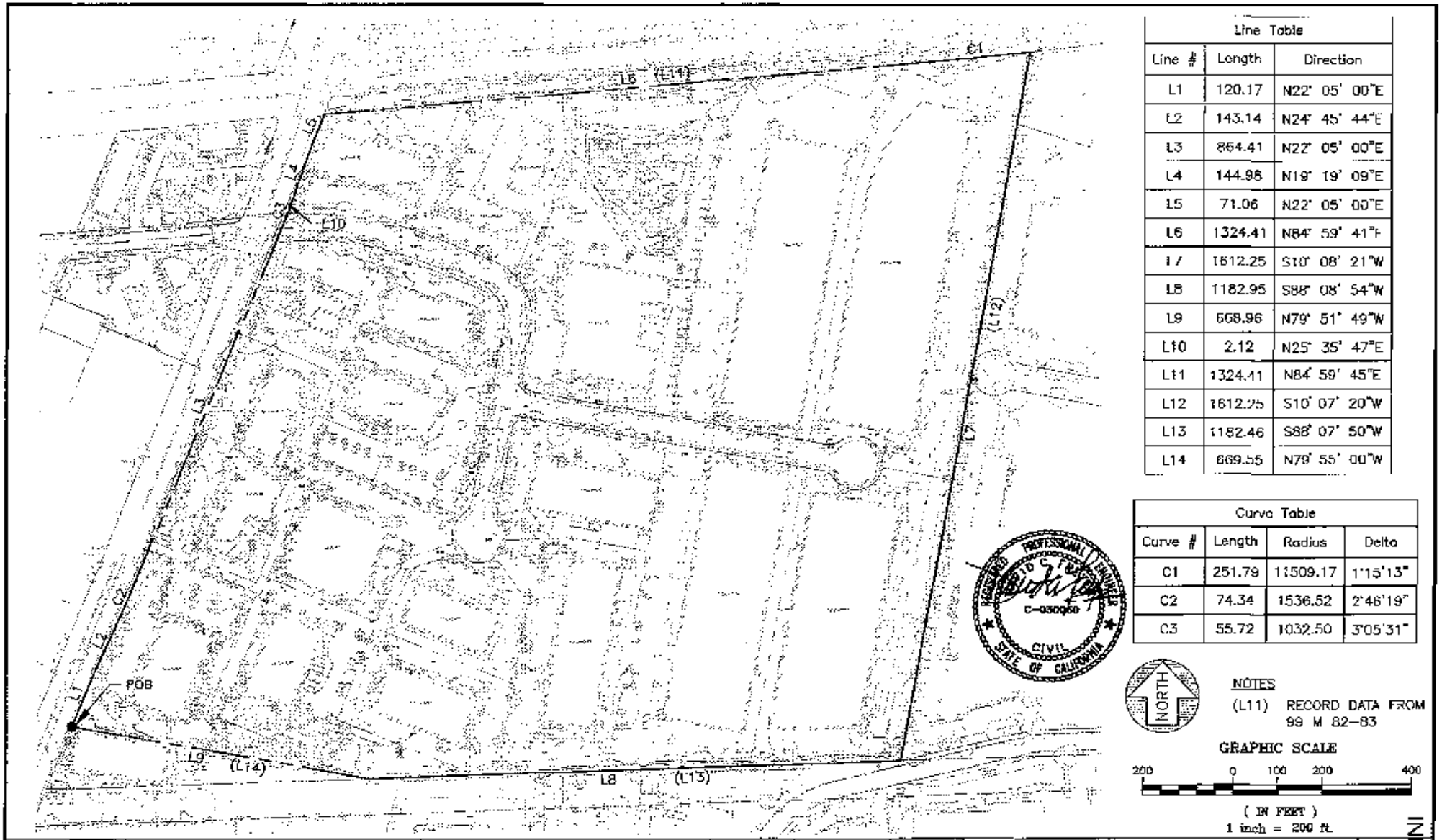
WITNESS my hand and official seal.

_____
(Notary Signature)

EXHIBIT A-1-1

MAIN PROJECT SITE MAP

(ATTACHED)



Line Table		
Line #	Length	Direction
L1	120.17	N22° 05' 00"E
L2	143.14	N24° 45' 44"E
L3	864.41	N22° 05' 00"E
L4	144.98	N19° 19' 09"E
L5	71.06	N22° 05' 00"E
L6	1324.41	N84° 59' 41"E
L7	1612.25	S10° 08' 21"W
L8	1182.95	S88° 08' 54"W
L9	668.96	N79° 51' 49"W
L10	2.12	N25° 35' 47"E
L11	1324.41	N84° 59' 45"E
L12	1612.25	S10° 07' 20"W
L13	1182.46	S88° 07' 50"W
L14	669.55	N79° 55' 00"W

Curve Table			
Curve #	Length	Radius	Delta
C1	251.79	11509.17	1°15'13"
C2	74.34	1536.52	2°46'19"
C3	55.72	1032.50	3°05'31"

NOTES

(L11) RECORD DATA FROM 99 M 82–83

DATE 9/30/2022
SCALE AS SHOWN
DESIGNED
DRAWN RJL
CHECKED DCT
PROJ. ENGR.

Freyer Laureta, Inc.
CIVIL ENGINEERS • SURVEYORS • CONSTRUCTION MANAGERS
50 Executive Blvd • Suite 4200 • San Francisco, CA 94134
(415) 534-7070 • www.freyerlaureta.com

DESCRIPTION	DATE

PROJECT SITE PLAT
WILLOW VILLAGE
MENLO PARK, CALIFORNIA

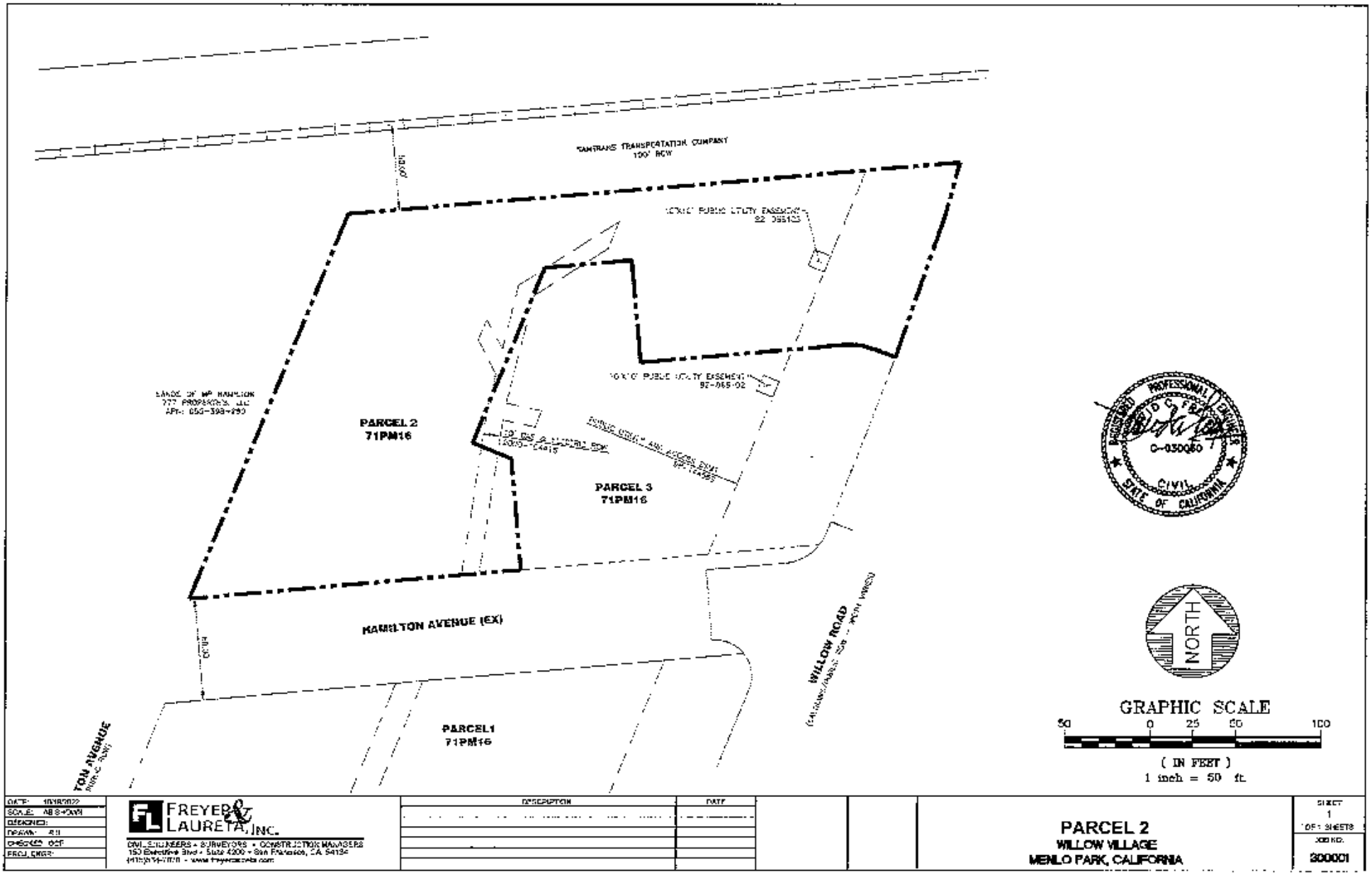
SHEET 1 OF 1 SHEETS
JOB NO. 3000662

INB21149652

EXHIBIT A-1-2

HAMILTON PARCELS MAP

(ATTACHED)



DATE: 10/19/2022 SCALE: AS SHOWN DESIGNED: DRAWN: AJI CHECKED: DCF PROJ. ENGR:	FREYER & LAURETA, INC. CIVIL ENGINEERS • SURVEYORS • CONSTRUCTION MANAGERS 150 Executive Blvd • Suite 4200 • San Francisco, CA 94134 (415)974-7700 • www.freyerlaureta.com	DESCRIPTION	DATE		PARCEL 2 WILLOW VILLAGE MENLO PARK, CALIFORNIA	SHEET 1 OF 1 SHEETS JOB NO. 300001

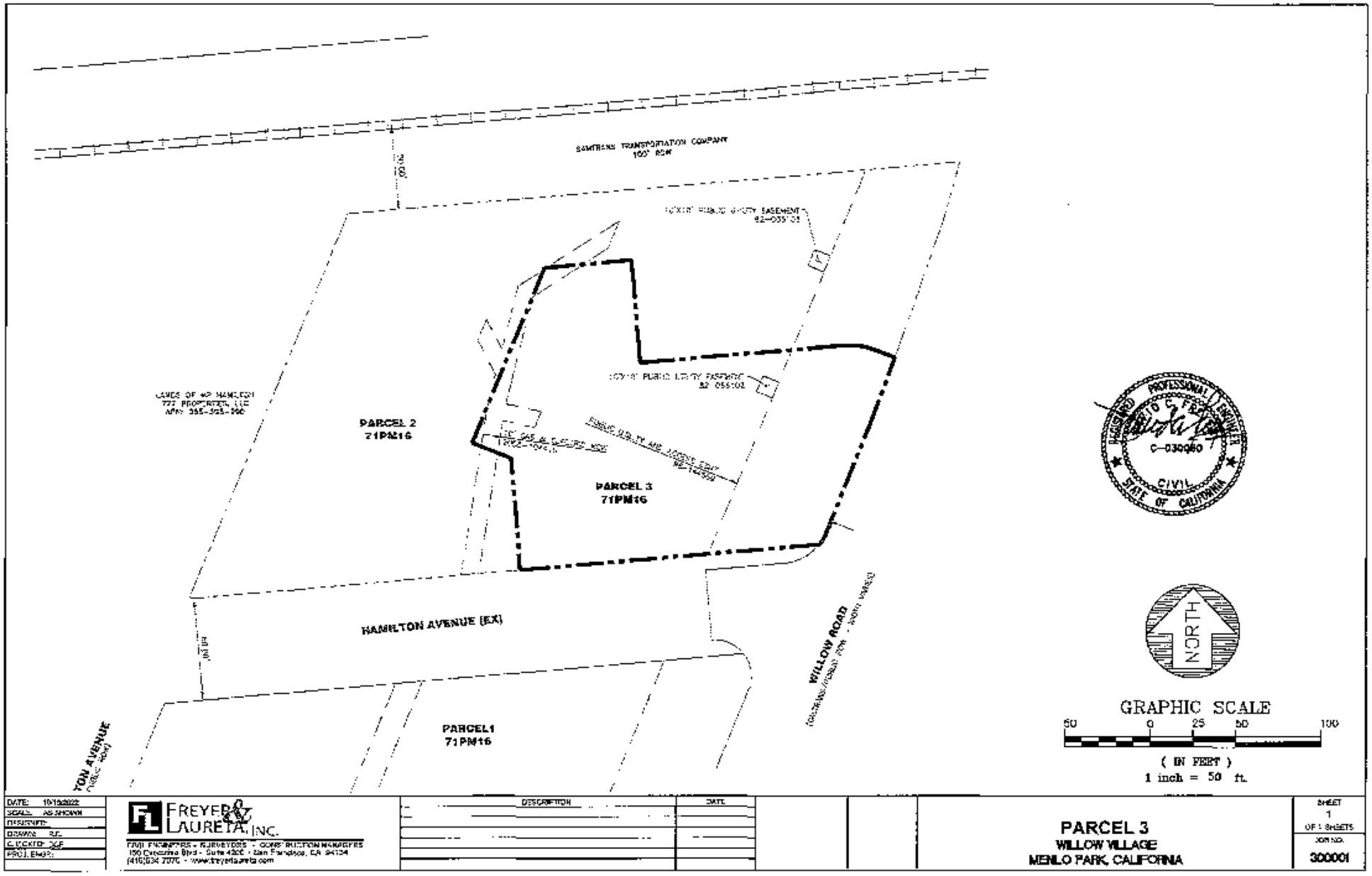


EXHIBIT A-2-1

MAIN PROJECT SITE LEGAL DESCRIPTION

(ATTACHED)

LEGAL DESCRIPTION
WILLOW VILLAGE SITE
MENLO PARK, CALIFORNIA

The land referred to is situated in the City of Menlo Park, County of San Mateo, State of California and is described as follows:

BEGINNING at the southwesterly corner of Parcel S; as shown on that certain map entitled "Menlo Industrial Center, City of Menlo Park, San Mateo County, California" filed in the office of the County Recorder of San Mateo County, State of California, on October 1, 1979, in Volume 99 of Maps at Pages 81-83, thence,

North 22°05'00" East, 120.17 feet; thence,

North 24°45'44" East, 143.14 feet; thence,

Along a tangent curve to the left, having a radius of 1,536.52 feet, length of 74.34 feet, and a delta angle of 02°46'19"; thence,

North 22°05'00" East, 864.41 feet; thence,

Along a tangent curve to the left, having a radius of 1,032.50 feet, length of 55.72 feet, and a delta angle of 03°05'31"; thence,

North 25°35'47" East, 2.12 feet; thence,

North 19°19'09" East, 144.98 feet; thence,

North 22°05'00" East, 71.06 feet; thence,

North 84°59'41" East, 1,324.41 feet; thence,

Along a tangent curve to the left, having a radius of 11,509.17 feet, length of 251.79 feet, and a delta angle of 01°15'13"; thence,

INB2714952

South 10°08'21" West, 1,612.25 feet; thence,

South 88°08'54" West, 1,182.95 feet; thence,

North 79°51'49" West, 668.96 feet to the **POINT OF BEGINNING.**

Containing 2,577,434.20 square feet (59.17 acres), more or less.

September 30, 2022

EXHIBIT A-2-2

HAMILTON PARCELS LEGAL DESCRIPTION

(ATTACHED)

INB2714952

LEGAL DESCRIPTION
PARCEL 2
PARCEL MAP FOR BELLE HAVEN RETAIL CENTER
MENLO PARK, CALIFORNIA

Parcel 2 as shown on that Map titled "Parcel Map for Belle Haven Retail Center", which map was filed in the Office of the Recorder of San Mateo County, on December 31st in Book 71 of Maps, pages 15-16.

Containing 51,011 square feet, more or less.

October 19, 2022

INB2714952

LEGAL DESCRIPTION
PARCEL 3
PARCEL MAP FOR BELLE HAVEN RETAIL CENTER
MENLO PARK, CALIFORNIA

Parcel 3 as shown on that Map titled "Parcel Map for Belle Haven Retail Center", which map was filed in the Office of the Recorder of San Mateo County, on December 31st in Book 71 of Maps, pages 15-16.

Containing 28,191 square feet, more or less.

October 19, 2022

EXHIBIT B

LLBG PROPERTIES, LLC CONSENT

LLBG Properties, LLC, a Delaware limited liability company, ("**LLBG Properties**") has reviewed the terms and conditions of that certain Development Agreement dated ~~as of on or about December 6,~~ December 13, 2022, by and between Peninsula Innovation Partners, LLC, a Delaware limited liability company, and the City of Menlo Park, a California municipal corporation, (the "**Development Agreement**") and hereby consents to the terms and conditions of the Development Agreement and the recordation of the Agreement against the property owned by LLBG Properties described in Exhibit A-2-2 to the Development Agreement.

LLBG PROPERTIES, LLC,
a Delaware limited liability company

By: _____
Name: JOHN FENANES
Title: V.P. REAL ESTATE

EXHIBIT C

IMPACT FEES

1. Transportation Impact Fee (Municipal Code Chapter 13.26)

2. Building Construction Street Impact Fee

3. Below Market Rate Housing Program (Municipal Code Chapter 16.96) [Note – being satisfied through provision of on-site affordable housing in accordance with Project affordable housing agreements and this Agreement rather than through payment of fee]

4. Residential Subdivision Recreation in Lieu Fees (Municipal Code Section 15.16.020) [Note – fee not applicable to current Project due to lack of for-sale residential units]

EXHIBIT D

WILLOW VILLAGE PHASING PLAN

Project Component	Timing/Milestones[1]	Required Minimum Number of Residential and BMR Units associated with such Phase of Construction[2]
1. Demolition, Grading, and Infrastructure Installation	1. Commence construction following approval of all applicable Improvement Plans for the area of construction.	
2. Elevated Park and Meeting and Collaboration Space ("**MCS**")	2. Commence construction concurrently with or after completion of demolition, grading and infrastructure for the area of construction.	

[1] The milestones set forth in this exhibit are based upon Developer's plan to construct six (6) office buildings as reflected in the Willow Village CDP. In the event that office building square footages shift considerably in the reasonable judgment of the City Manager (e.g., increase by more than twenty-five percent (25%) as to any office building or buildings that trigger(s) a milestone) or combine, the obligations set forth in this exhibit shall shift in a correlative manner through a meet and confer process between the Parties, with resulting changes to this exhibit being documented in writing by the Parties through an Operating Memorandum pursuant to Section 8.7 of this Agreement. Nothing in this Footnote authorizes an increase in the total office building square footage for the Project above the amount approved in the Project Approvals.

[2] Final distribution of residential units, including BMR units, to be determined at building permit for each building containing residential units. Reduction from required minimum number of units by up to five percent (5%) within phases is permitted. Reduction from required number of units by more than five percent (5%) but less than up to ten percent (10%) within phases requires approval through an Operating Memorandum pursuant to Section 8.7 of this Agreement. Reduction from the required number of units by more than 10 percent (10%) within phases requires approval through amendment of this Agreement pursuant to Section 8.1 of this Agreement. A reduction in the aggregate total number of units of up to one percent (1%) at full build out (e.g. 1730 units) is permitted where unexpected design or construction requirements necessitate such a reduction, and a reduction of between one percent (1%) and five percent (5%) shall be permitted upon approval by the City Manager, but such a request shall not be denied where the City Manager determines that unexpected design or construction requirements necessitate such a reduction.

Project Component	Timing/Milestones[1]	Required Minimum Number of Residential and BMR Units associated with such Phase of Construction[2]
3. First, Second and Third Office buildings[3]	3. Commence construction concurrently with or after commencement of Elevated Park and MCS. Complete Structural Podium of the mixed-use building on Parcel 2 ("RS2") and the residential building on Parcel 6 ("RS6") prior to final Certificate of Occupancy ("COO") for first office building, but if a temporary COO has been issued, no later than 120 days from the issuance of a temporary COO for the first office building. Complete roof framing of RS2 and RS6 prior to final COO for the second office building, but if a temporary COO has been issued, no later than 120 days from the issuance of a temporary COO for the second office building.	
4. Residential buildings RS2 and RS6	4. Commence construction of RS2 on or before commencement of construction of first office building. Commence construction of RS6 within 90 days after commencement of construction of first office building.	RS2 and RS6 have a combined total of 505 units, including 54 BMR units.

[3] Office buildings as used in this Exhibit D excludes the MCS.

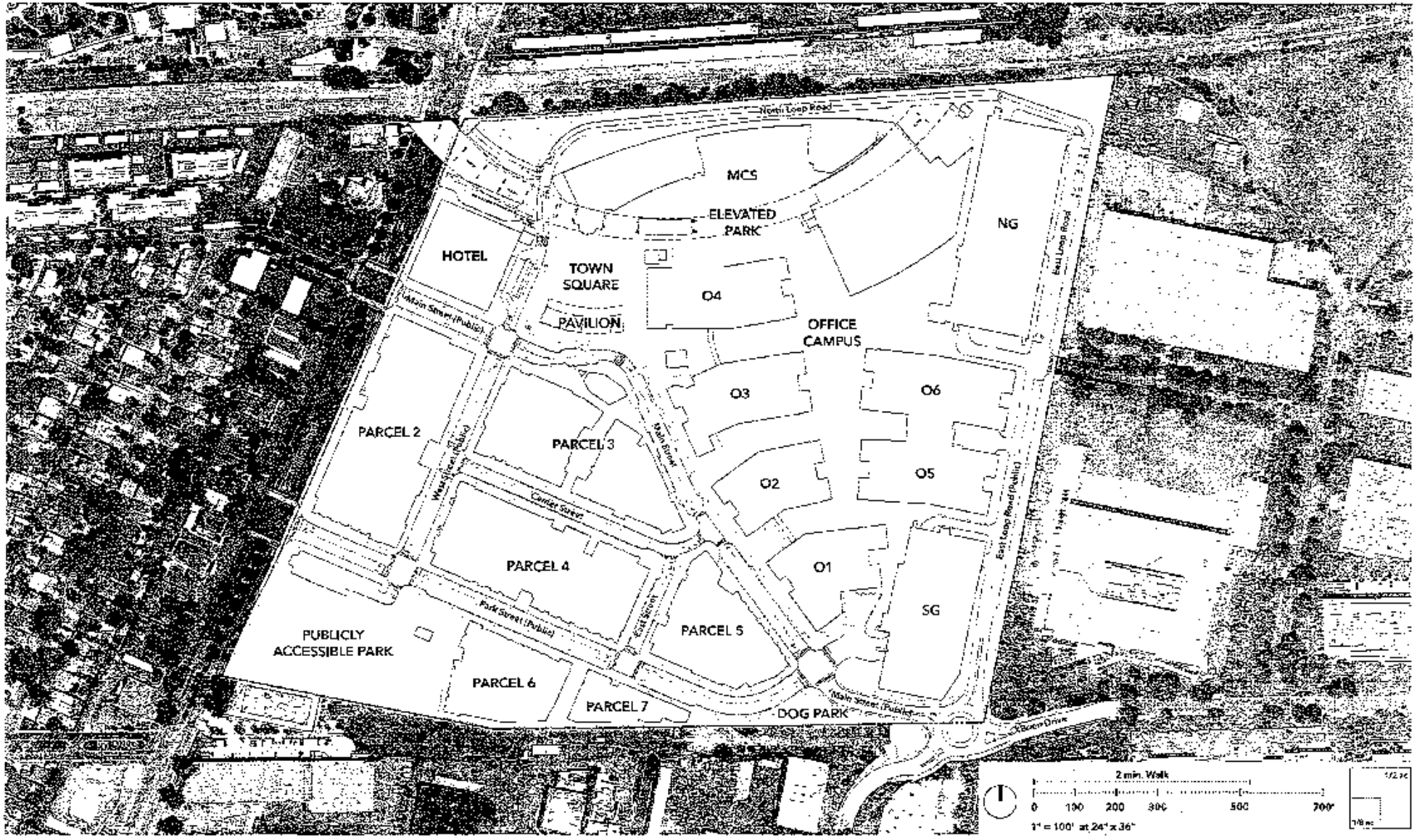
Project Component	Timing/Milestones[1]	Required Minimum Number of Residential and BMR Units associated with such Phase of Construction[2]
5. Fourth Office building	5. Commence construction of RS2 and RS6 prior to issuance of building permits for the fourth office building. Issue temporary or final COO for RS2 and RS6 prior to any temporary COO for the fourth office building. Issue final COO for RS2 and RS6 prior to a final COO for the fourth office building, but no later than 120 days from the issuance of any temporary COO for RS2 and RS6.	

Project Component	Timing/Milestones[1]	Required Minimum Number of Residential and BMR Units associated with such Phase of Construction[2]
6. Sixth Office building	6. Complete construction of podium of the mixed-use building on Parcel 3 ("RS3") and the residential building on Parcel 7 ("RS7") prior to issuance of building permits for the sixth office building. Commence construction of the residential building on Parcel 4 ("RS4") and the residential building on Parcel 5 ("RS5") prior to final COO for the sixth office building, but, if a temporary COO has been issued, no later than 120 days after the issuance of a temporary COO for the sixth office building. Issue temporary or final COO for RS7 prior to any temporary COO for the sixth office building. Issue final COO for RS7 prior to a final COO for the sixth office building, but no later than 120 days from the issuance of any temporary COO for RS7.	RS3 and RS7 (senior building) have a combined total of 539 units, including 162 BMR units. RS4 and RS5 have a combined total of 686 units, including 96 BMR units.

EXHIBIT E-1

CONCEPTUAL SITE PLAN

(ATTACHED)



MASTER PLAN
Peninsula Innovation Partners

WILLOW VILLAGE

Menlo Park, CA

Conceptual Master Plan
October 12, 2022

EXHIBIT E-2

CONCEPTUAL PUBLICLY ACCESSIBLE OPEN SPACE SITE PLAN

(ATTACHED)

MASTER PLAN
Peninsula Innovation Partners

WILLOW VILLAGE

Menlo Park, CA

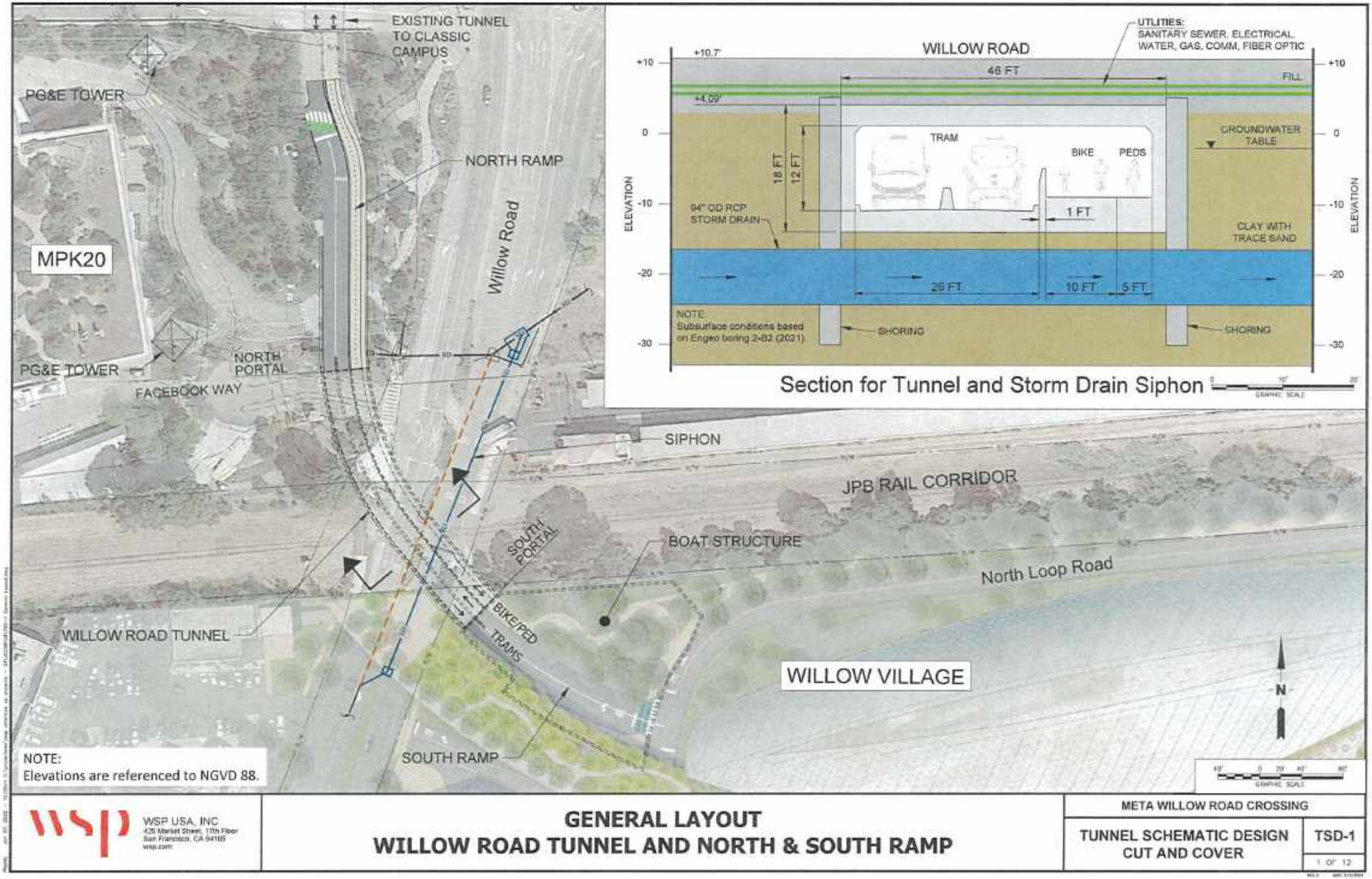
Publicly Accessible Open Space
October 12, 2022

INB2714952

EXHIBIT E-3

CONCEPTUAL WILLOW ROAD TUNNEL

(ATTACHED)



WSP USA, INC
425 Market Street, 17th Floor
San Francisco, CA 94105
wsp.com

GENERAL LAYOUT
WILLOW ROAD TUNNEL AND NORTH & SOUTH RAMP

META WILLOW ROAD CROSSING

TUNNEL SCHEMATIC DESIGN
CUT AND COVER

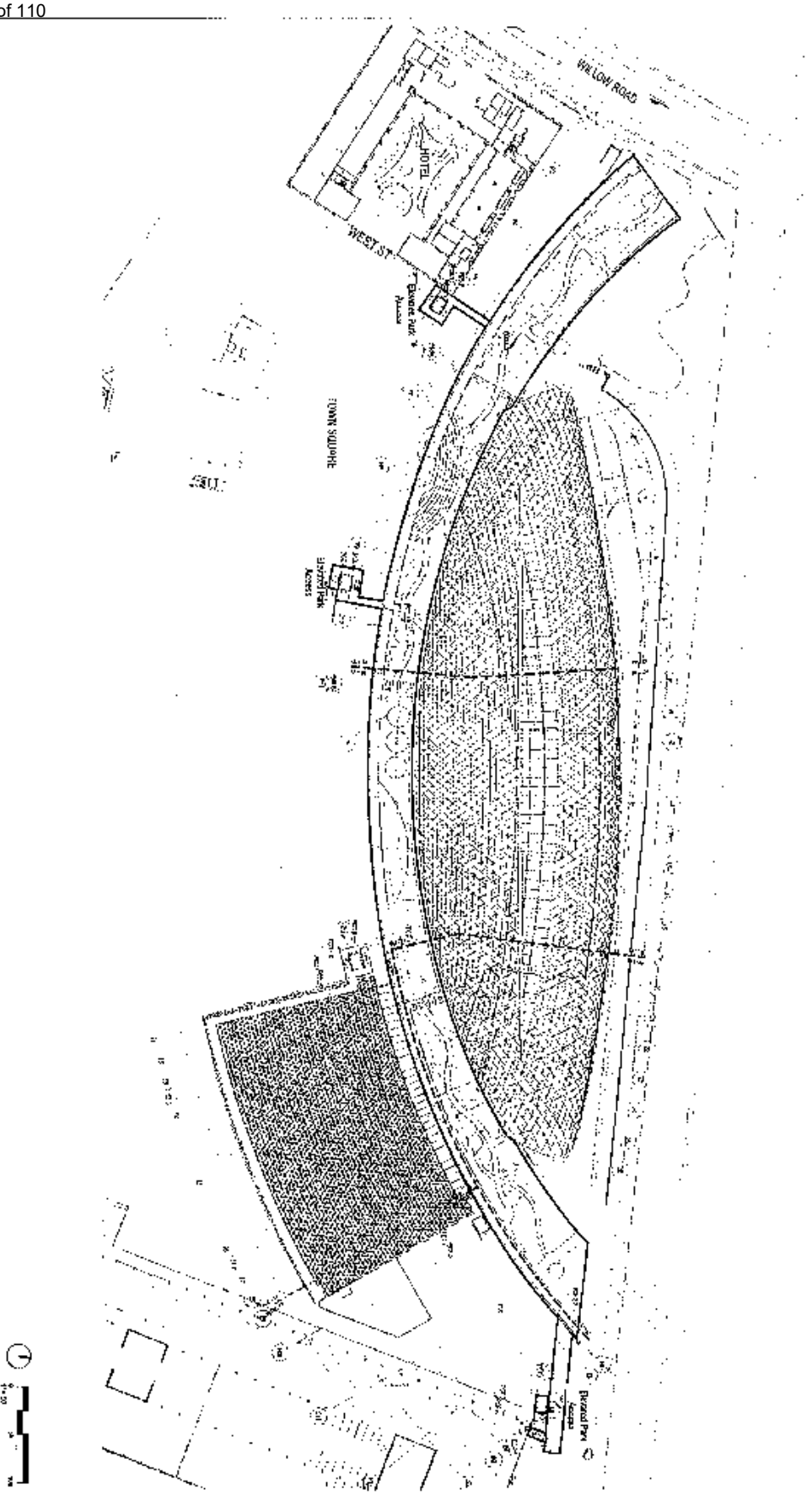
TSD-1

1 OF 12

EXHIBIT E-4

CONCEPTUAL ALTERNATIVE DESIGN FOR ELEVATED PARK VERTICAL TRANSPORTATION SYSTEM

(ATTACHED)



A2.05

ROOF PLAN

WILLOW VILLAGE

Architectural Control Package - Parcel 1

Menlo Park, CA

PENINSULA INNOVATION PARTNERS

INB2714952

EXHIBIT F

WILLOW VILLAGE COMMUNITY AMENITIES TIMING PROVISIONS

Building Related Amenities	Timing/Milestones/Valuations
1. Elevated Park/MCS	1. First Vertical Improvements to be constructed.
2. Grocery Store and Rent Subsidies	2. Grocery store located in RS2 (first residential building);[4] issue temporary or final COO for Grocery Store tenant improvements prior to any temporary COO for the sixth office building. Issue final COO for Grocery Store tenant improvements prior to a final COO for the sixth office building, but no later than 120 days from the issuance of a temporary COO for the Grocery Store tenant improvements.
Offsite Amenity	
1. Affordable Housing Contribution	1. Total contribution of $6 Million to City, with an initial payment of $3 Million upon issuance of first building permit for vertical construction and a second payment of $3 Million on the first anniversary of such issuance.
2. Air Quality and Noise Monitoring Equipment Funding	2. Prior to issuance of the first demolition permit.
3. Willow Road Feasibility Study funding or for other use as determined by City	3. $100,000 prior to issuance of first building permit for vertical construction.
4. Funding for Job Training Programs	4. Ongoing funding of $8,304,907 total for: a) Year-up and Hub from February 2022-December 2024. b) Job Train from January 2022- December 2023.
5. Teacher Housing Rent Subsidies	5. Ongoing funding of $1,745,319 total for February 2022- March 2024.

4 RS2 is the residential building located on Parcel 2.

Building Related Amenities	Timing/Milestones/Valuations
Vertical Buildout Amenities	
1. Bayfront Shuttle	1. Bayfront Shuttle to be operational at the earlier of the opening of the Grocery Store or the completion of the Elevated Park.
2. Bank/Credit Union	2. Complete Construction and secure final COO within 12 months after final COO for RS3, but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for RS3.
3. First Phase Dining (9,000 SF of restaurants/cafes)	3. Complete Construction and secure final COO within 9 months after final COO for RS3, but, if a temporary COO has been issued, no later than 13 months after the issuance of a temporary COO for RS3.
4. Second Phase Dining (2nd 9,000 SF of restaurants/cafes)	4. Complete Construction and secure final COO within 18 months after final COO for RS3, but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for RS3.
5. First Phase Community Entertainment (12,500 SF of Community Entertainment)	5. Complete Construction and secure final COO within 18 months after final COO for RS3, but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for RS3.
6. Second Phase Community Entertainment (2nd 12,500 SF of Community Entertainment)	6. Complete Construction and secure final COO within 24 months after final COO for RS3, but, if a temporary COO has been issued, no later than 28 months after the issuance of a temporary COO for RS3.

Building Related Amenities	Timing/Milestones/Valuations
7. Pharmacy Services	7. Timing is dependent on location; Complete Construction and secure final COO: a) if within Willow Hamilton retail center, then 12 months after completion of the Elevated Park elevator tower at the Hamilton center; b) if within Willow Village in RS3, then within 12 months after final COO for RS3, but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for RS3; c) if within Willow Village in Office Building O2 Retail (east side of Main), then within 12 months after later of (i) final COO for RS3 to correspond with retail on the west side of Main (but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for RS3) or (ii) final COO for O2 (but, if a temporary COO has been issued, no later than 22 months after the issuance of a temporary COO for O2); or d) if within Willow Village Parcel 2 in conjunction with the grocery store, then within 12 months after final COO for RS2, but, if a temporary COO has been issued, no later than 16 months from the issuance of a temporary COO for RS2
Publicly Accessible Open Space Amenities	
1. Town Square Open Space	2. Complete Construction of Town Square improvements east of West Street, up to O4, within 12 months after completion of Town Square garage structural podium regardless of hotel status; commence construction of remainder within 6 months after final COO for hotel and complete within 18 months after final COO for hotel; maintain improvements following completion.
2. Elevated Park	5. Commence construction after issuance of first building permit for Elevated Park, and diligently prosecute to Completion of Construction
3. Excess Publicly Accessible Open Space	6. Construct concurrent with Completion of Construction of Elevated Park

EXHIBIT G

FORM OF PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT

(ATTACHED)

Recording Requested by and
When Recorded Return to:

_____
_____
_____
_____

_____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT AND ASSUMPTION AGREEMENT - DEVELOPMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("**Agreement**") is made and entered into as of _____, 20__, by and between _____, a _____ company ("**Assignor**"), and _____, a _____ company ("**Assignee**").

RECITALS

A. Assignor owns that real property located in the City of Menlo Park ("**City**"), County of San Mateo, State of California, and more particularly described in Exhibit A attached hereto (the "**Property**").

B. On the date hereof, Assignee is acquiring approximately __ acres of the Property as more particularly described in Exhibit B attached hereto (the "**Assigned Property**").

C. The City and Peninsula Innovation Partners, LLC, a Delaware limited liability company, entered into that certain Development Agreement dated as of _____, 202_ and recorded against the Property on _____, 202_ as Instrument No. _____ in the San Mateo County Recorder's Office (the "**Development Agreement**").

D. Assignor desires to assign to Assignee all of Assignor's rights, duties and obligations under the Development Agreement with respect to the Assigned Property only (excluding, however, Assignor's obligations with respect to the construction of and/or payment for certain infrastructure and other project-wide items specified in Exhibit C, attached hereto (the "**Assignor Retained Obligations**"), for which Assignor remains responsible) (the "**Assigned Rights and Obligations**"), and Assignee desires to accept and assume Assignor's rights and obligations under the Development Agreement with respect to the Assigned Property only (the "**Assumed Rights and Obligations**"), such assignment and assumption to be effective on the Effective Date (as defined in Section 1.3 below). The Assigned Rights and Obligations and the Assumed Rights and Obligations are referred to collectively herein as the "**Assigned Property Rights and Obligations**".

NOW THEREFORE, in consideration of these promises, and of the agreements, covenants and conditions contained in this Agreement and other good and valuable consideration, the parties agree as follows:

ARTICLE 1.

ASSIGNMENT AND ASSUMPTION OF THE ASSIGNED PROPERTY RIGHTS AND OBLIGATIONS

1.1. Assignment. Assignor assigns to Assignee, as of the Effective Date (as defined in Section 1.3 below), all of Assignor's rights, title and interest in and to the Assigned Property Rights and Obligations.

1.2. Assumption. As of the Effective Date, Assignee accepts Assignor's assignment of the Assigned Rights and Obligations and assumes the Assumed Rights and Obligations. From and after the Effective Date, Assignee shall keep and perform all covenants, conditions and provisions of the Development Agreement relating to the Assigned Property._

1.3. Effective Date. For purposes of this Agreement, the "Effective Date" shall be the later to occur of (1) the date on which the deed from Assignor to Assignee for the Assigned Property is recorded in the Office of the Recorder of the County of San Mateo; or (2) the date of the execution of this Agreement by all parties; provided, however, that this Agreement shall have no force and effect without the written approval of the City, as evidenced by the full execution by the City's representatives of the form entitled City of Menlo Park's Consent, attached hereto as Exhibit D.

1.4. Phasing. Nothing in this Agreement shall be deemed to relieve any party of the timing obligations established in Exhibits D and F to the Development Agreement.

ARTICLE 2.

RIGHTS AND REMEDIES

2.1. Assignor's Release; No Assignor Liability or Default for Assignee Breach. Pursuant to Section 10.2 of the Development Agreement, Assignor shall be released from the Development Agreement with respect to the Assigned Property and the Assumed Rights and Obligations as of the Effective Date. Any default or breach by Assignee under the Development Agreement following the Effective Date with respect to the Assigned Property or the Assumed Rights and Obligations ("**Assignee Breach**") shall not constitute a breach or default by Assignor under the Development Agreement and shall not result in (a) any remedies imposed against Assignor, or (b) modification or termination of the Development Agreement with respect to that portion of the Property retained by Assignor after the conveyance of the Assigned Property, if any (the "**Assignor Property**").

2.2. No Assignee Liability or Default for Assignor Breach. As of the Effective Date, any default or breach by Assignor under the Development Agreement prior to or after the Effective Date ("**Assignor Breach**"), shall not constitute a breach or default by Assignee under the Development Agreement, and shall not result in (a) any remedies imposed against Assignee, including without limitation any remedies authorized in the Development Agreement, or (b) modification or termination of the Development Agreement with respect to the Assigned Property.

ARTICLE 3.

PERIODIC REVIEW OF COMPLIANCE

3.1. Assignor Responsibilities. Assignor shall participate in the annual review of the Development Agreement conducted pursuant to Section 65865.1 of the California Government Code with respect to the Assignor Property, and Assignee shall have no responsibility therefor.

3.2. Assignee Responsibilities. Assignee shall participate in the annual review of the Development Agreement conducted pursuant to Section 65865.1 of the California Government Code with respect to the Assigned Property, and Assignor shall have no responsibility therefor.

ARTICLE 4.

AMENDMENT OF THE DEVELOPMENT AGREEMENT

4.1. Assignor. Assignor shall not request, process or consent to any amendment to the Development Agreement that would affect the Assigned Property or the Assigned Property Rights and Obligations without Assignee's prior written consent, which consent shall not be withheld unreasonably. The foregoing notwithstanding, Assignor may process any amendment that does not affect the Assigned Property, and, if necessary, Assignee shall consent thereto and execute all documents necessary to accomplish said amendment, provided that said amendment does not adversely affect the Assigned Property or any of Assignee's Assigned Property Rights and Obligations pursuant to the Development Agreement.

4.2. Assignee. Assignee shall not request, process or consent to any amendment to the Development Agreement that would affect the Assignor Property or the Assignor's remaining rights and obligations pursuant to the Development Agreement without Assignor's prior written consent, which consent shall not be withheld unreasonably. The foregoing notwithstanding, Assignee may process any amendment that does not affect the Assignor Property or any of Assignor's remaining rights and obligations pursuant to the Development Agreement, and, if necessary, Assignor shall consent thereto and execute all documents necessary to accomplish said amendment.

ARTICLE 5.

GENERAL PROVISIONS

5.1. Notices. All notices, invoices and other communications required or permitted under this Agreement shall be made in writing, and shall be delivered either personally (including by private courier) or by nationally recognized overnight courier service to the following addresses, or to such other addresses as the parties may designate in writing from time to time:

If to Assignee:

with copies to:

If to Assignor:

with a copies to:

Notices personally delivered shall be deemed received upon delivery. Notices delivered by courier service as provided above shall be deemed received twenty-four (24) hours after the date of deposit. From and after the Effective Date and until further written notice from Assignee to the City pursuant to the terms of the Development Agreement, Assignee hereby designates as its notice address for notices sent by the City pursuant to Section 12.5 of the Development Agreement, the notice address set forth above.

5.2. Estoppel Certificates. Within ten (10) days after receipt of a written request from time to time, either party shall execute and deliver to the other, or to an auditor or prospective lender or purchaser, a written statement certifying to that party's actual knowledge: (a) that the Development Agreement is unmodified and in full force and effect (or, if there have been modifications, that the Development Agreement is in full force and effect, and stating the date and nature of such modifications); (b) that there are no current defaults under the Development Agreement by the City and either Assignor or Assignee, as the case may be (or, if defaults are asserted, so describing with reasonable specificity) and that there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default; (c) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, and stating the date and nature of such modifications); and (d) such other matters as may be reasonably requested.

5.3. Attorneys' Fees. In the event of any legal or equitable proceeding in connection with this Agreement, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees, costs and disbursements paid or incurred in good faith at the arbitration, pre-trial, trial and appellate levels, and in enforcing any award or judgment granted pursuant thereto.

5.4. No Waiver. No delay or omission by either party in exercising any right, remedy, election or option accruing upon the noncompliance or failure of performance by the other party under the provisions of this Agreement shall constitute an impairment or waiver of any such right, remedy, election or option. No alleged waiver shall be valid or effective unless it is set forth in a writing executed by the party against whom the waiver is claimed. A waiver by either party of any of the covenants, conditions or obligations to be performed by the other party shall

not be construed as a waiver of any subsequent breach of the same or any other covenants, conditions or obligations.

5.5. Amendment. This Agreement may be amended only by a written agreement signed by both Assignor and Assignee, and subject to obtaining the City's consent.

5.6. Successors and Assigns. This Agreement runs with the land and shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

5.7. No Joint Venture. Nothing contained herein shall be construed as creating a joint venture, agency, or any other relationship between the parties hereto other than that of assignor and assignee.

5.8. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the full extent permitted by law; provided that, if the invalidation or unenforceability would deprive either Assignor or Assignee of material benefits derived from this Agreement or make performance under this Agreement unreasonably difficult, then Assignor and Assignee shall meet and confer and shall make good faith efforts to modify this Agreement in a manner that is acceptable to Assignor, Assignee and the City.

5.9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

5.10. Third-Party Beneficiaries. Assignor and Assignee acknowledge that the City is a third-party beneficiary of the terms and conditions of this Agreement to the extent necessary for City to enforce the terms and conditions of the Development Agreement. This Agreement shall not be deemed or construed to confer any rights, title or interest, including without limitation any third-party beneficiary status or right to enforce any provision of this Agreement, upon any person or entity other than Assignor, Assignee and the City.

5.11. Time of the Essence. Time is of the essence in the performance by each party of its obligations under this Agreement.

5.12. Authority. Each party represents that the individuals executing this Agreement on behalf of such Party have the authority to bind his or her respective party to the performance of its obligations hereunder and that all necessary board of directors', shareholders', partners' and other approvals have been obtained.

5.13. Term. The term of this Agreement shall commence on the Effective Date and shall expire upon the expiration or earlier termination of the Development Agreement, subject to any obligations under the Development Agreement that expressly survive the expiration or termination of the Development Agreement. Upon the expiration or earlier termination of this Agreement, the parties shall have no further rights or obligations hereunder, except with respect to any obligation to have been performed prior to such expiration or termination or with respect

to any default in the performance of the provisions of this Agreement which occurred prior to such expiration or termination or with respect to any obligations which are specifically set forth as surviving this Agreement or the Development Agreement.

5.14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

5.15. Default. Any failure by either party to perform any material term or provision of this Agreement shall constitute a default (a) if such defaulting party does not cure such failure within thirty (30) days following written notice of default from the other party, where such failure is of a nature that can be cured within such thirty (30) day period, or (b) if such default is not of a nature that can be cured within such thirty (30) day period, if the defaulting party does not within such thirty (30) day period commerce substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence the curing of such failure. Any notice of default given hereunder shall be given in the same manner as provided in Section 5.1 hereof and shall specify in detail the nature of the failures in performance that the noticing party claims and the manner in which such failure can be satisfactorily cured.

[remainder of page left intentionally blank – signature pages follow]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement by proper persons thereunto duly authorized, to be effective as of the Effective Date.

"Assignor"

_____,
a _____**company**

By:_____
Name:_____
Title:_____

"Assignee"

_____,
a _____**company**

By:_____
Name:_____
Title:_____

INB2714952

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 20__ before me, _____
Notary Public (insert name and title of the officer),

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

[Seal]

INB2714952

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

[Seal]

EXHIBIT A

Description of the Property

(Attached)

EXHIBIT B

Description of the Assigned Property

(Attached)

EXHIBIT C

List of Assignor Retained Obligations

(Attached)

EXHIBIT D

CONSENT OF CITY OF MENLO PARK

The City of Menlo Park hereby consents to the assignment and assumption of the Assigned Property Rights and Obligations as set forth in this Agreement and agrees to the terms and conditions set forth herein.

CITY OF MENLO PARK,
a California Municipal corporation

By: _____
_____
_____