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DEVELOPMENT AGREEMENT

By and Between

CITY OF PALO ALTO, A Chartered City

and

SI 45, LLC,

A Delaware Limited Liability Company

3200 Portage Avenue

Effective Date: _____

Table of Contents

	Page
ARTICLE I — DEFINITIONS	3
1.1 Definitions	3
ARTICLE II - PROPERTY SUBJECT TO THE DEVELOPMENT AGREEMENT; BINDING EFFECT; NEGATION OF AGENCY	7
2.1 Property Subject to the Development Agreement	7
2.2 Binding Effect.....	7
2.3 Negation of Agency	7
ARTICLE III — TERM; FORCE MAJEURE; CANCELLATION	8
3.1 Basic Term	8
3.2 Force Majeure	8
3.3 Extension of Term Due to Moratoria.....	8
3.4 Cancellation by Mutual Consent.....	8
ARTICLE IV — DEVELOPMENT OF THE PROPERTY.....	9
4.1 Vested Development Rights	9
4.2 Subsequent Approvals	9
4.3 Sequence of Development	10
4.4 Permitted Uses	10
ARTICLE V — OWNER PROMISES.....	11
5.1 Construction of the Parking Garage and R&D Relocation.....	11
5.2 Demolition of Portion of Cannery and Completion of Retail/Display and Outdoor Seating Area.....	11
5.3 Recordation of Final Map and Dedication of BMR/Parkland Dedication Parcel.....	13
5.4 Environmental Conditions	13
5.5 Switch Building	13
5.6 Development of Townhomes and Park Building.....	14
5.7 Transportation Demand Management Program.....	14
5.8 Payment of Fees.....	14
ARTICLE VI — CITY PROMISES.....	15
6.1 Processing of Subsequent Approvals.....	15
6.2 Acceptance of BMR/Parkland Dedication Parcel.....	15
ARTICLE VII - EXCEPTIONS AND EXCLUSIONS.....	16
7.1 Subsequent Applicable Rules	16
7.2 Supervening Rules of Other Governmental Agencies	17
7.3 Building Codes	17
7.4 Utility Services	17
7.5 No General Limitation of Future Exercise of Power	17
7.6 Alternative Approvals.....	17

ARTICLE VIII - ANNUAL REVIEW	18
8.1 Annual Review	18
ARTICLE IX - DEFAULT, REMEDIES, TERMINATION	18
9.1 Remedies for Breach.....	18
9.2 Notice of Breach	19
9.3 Applicable Law	19
ARTICLE X — AMENDMENTS	19
10.1 Modification Because of Conflict with State or Federal Laws.....	19
10.2 Amendment by Mutual Consent	20
10.3 City Costs for Review	20
10.4 Minor Amendments	20
10.5 Amendment of Approvals.....	21
ARTICLE XI — COOPERATION AND IMPLEMENTATION.....	21
11.1 Cooperation.....	21
11.2 City Processing	21
11.3 Other Governmental Permits	22
ARTICLE XII — TRANSFERS AND ASSIGNMENTS.....	22
12.1 Transfers and Assignments.....	22
12.2 Covenants Run with the Land.....	22
ARTICLE XIII — MORTGAGE PROTECTION; CERTAIN RIGHTS OF CURE.....	23
13.1 Mortgage Protection	23
13.2 Mortgagee Not Obligated	23
13.3 Notice of Default to Mortgagee.....	23
ARTICLE XIV — GENERAL PROVISIONS	23
14.1 Project is a Private Undertaking	23
14.2 Notices, Demands, and Communications between the Parties	23
14.3 Severability	24
14.4 Section Headings	24
14.5 Entire Agreement.....	24
14.6 Estoppel Certificate.....	25
14.7 Statement of Intention.....	25
14.8 Indemnification and Hold Harmless	25
14.9 Recordation.....	26
14.10 No Waiver of Police Powers or Rights.....	26
14.11 City Representations and Warranties.....	26
14.12 Owner Representations and Warranties.....	26
14.13 Counterparts.....	27
14.14 Waivers	27
14.15 Time is of the Essence	27
14.16 Venue	27
14.17 Surviving Provisions.....	27

14.18 Construction of Agreement.....	27
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EXHIBIT A – Legal Description

EXHIBIT B – Plat

EXHIBIT C - Schedule and Parties’ Remedies for Default or Breach

EXHIBIT D – [Form of] Assignment and Assumption Agreement

DRAFT

DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF PALO ALTO AND SI 45, LLC

THIS DEVELOPMENT AGREEMENT (hereinafter “Agreement”) is entered into as of [date], by and between the CITY OF PALO ALTO, a chartered city of the State of California (“City”), and SI 45, LLC, a Delaware limited liability company (“Owner”). City and Owner are each a “Party” and collectively, the “Parties.”

RECITALS

THIS DEVELOPMENT AGREEMENT is entered into on the basis of the following facts, understandings and intentions of the parties:

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

B. Pursuant to Government Code Section 65865, the City has adopted Resolution No. 7104, establishing procedures and requirements for consideration of development agreements in Palo Alto. This Development Agreement has been processed, considered, and executed in accordance with such procedures and requirements.

C. Owner has a legal interest in certain real property located in the City consisting of approximately 14.65 acres and commonly known as 200-404 Portage Avenue, 3201-3225 Ash Street, 3040-3250 Park Boulevard and 278 Lambert Street in Palo Alto, California (collectively, the “Property”), which Property is described in the attached Exhibit A, and shown on the map attached as Exhibit B.

D. City and Owner through a City Council-appointed ad hoc subcommittee conducted good faith and collaborative negotiations regarding the current and future uses of the Property, including a dispute regarding legal non-conforming uses of the property (“LNCU Dispute”) and Owner’s pending application for a 91-unit residential project, including 15% moderate for sale affordable units, on a portion of the Property pursuant to certain state housing laws, including SB 330 (“SB 330 Residential Project”). As a means of resolving the LNCU Dispute and as a more holistic alternative to the SB 330 Residential Project, City and Owner entered into a Tolling and Process Agreement (“TPA Agreement”), dated July 31, 2022, for consideration of this Agreement and related Approvals by City officials. The recitals of the TPA Agreement contain a more full contextual chronology.

E. City desires to grant Owner vested development rights to construct and operate the Project in a manner consistent with this Agreement. In exchange for these development rights, Owner agrees the LNCU Dispute is resolved, to proceed with the Project in lieu of the SB 330 Residential Project and to provide certain public benefits, including, but not limited to, (i) transfer of approximately 3.25 acres of land to the City for affordable housing and park uses, (ii) construct a one level over grade structured parking garage to allow relocation of the existing surface parking

on the dedication property, (iii) renovate/rehabilitate the remaining portion of the historic cannery building, including an approximately 2,600 square foot retail space to facilitate public appreciation of the interior historic elements of the cannery building and an adjacent outdoor landscaped seating area, (iv) implement a Transportation Demand Management (“TDM”) program for the existing R&D and office uses to reduce single occupant trips by 15%, (v) payment of \$5 Million fee to the City to support affordable housing and open space at the City’s discretion, and (vi) payment of all other applicable fees per the City’s municipal code as specified herein.

F. Concurrently with approval of this Development Agreement, the City has taken several actions to review and plan for the future development of the Project, including all required noticing and review and recommendation by the Architectural Review Board, Historic Review Board and Transportation and Planning Commission, and duly noticed public hearings by the City Council. These actions include the following, collectively the “Existing Approvals”:

- a. Environmental Impact Report: The environmental impacts of the Project, including associated Approvals, have properly been reviewed and evaluated by the City pursuant to the California Environmental Quality Act, Public Resources Code Sections 21000 et seq. (“CEQA”). Pursuant to CEQA, the City Council certified the Environmental Impact Report (“EIR”) for housing development at 200 Portage, which includes analysis of the Project as a project alternative, and adopted a Statement of Overriding Considerations by Resolution No. XXXX, adopted on [date]. As required by CEQA, the City adopted written findings and a mitigation monitoring and reporting program (“MMRP”).
- b. Comprehensive Plan Amendment: Resolution No. XXXX on [date], amending the land use designation of a portion of the Property in a manner consistent with the Project (“Comp Plan Amendment”).
- c. Rezoning Ordinances: Ordinance Nos. XXXX [PC cannery], XXXX [PC Audi], XXX [PC Townhomes] and XXXX [PC Ash] [and dedication parcel to remain RM-30] on [date], rezoning portions of the Property in a manner consistent with the Project (“Rezoning Ordinances”).
- d. Architectural Review: Record of Land Use Action No XXXX on [date] approving of the Parking Garage and Historic Restoration and Rehabilitation of the Remaining Cannery (“Cannery Architectural Review Approval”) and Townhomes (“Townhomes Architectural Review Approval”).
- e. Tentative Map: Record of Land Use Action No. XXXX on [date] to merge and resubdivide the Property into five parcels for the Remaining Cannery, the Townhomes, the Ash Building, the Park Building, and the BMR/Parkland Dedication Parcel (“Tentative Map”).
- f. TDM Program: Record of Land Use Action No. XXXX on [date] includes approval of a TDM Program for the Project, consistent with Section 5.7 this Agreement (“TDM Plan”).

G. The City is desirous of encouraging the creation of quality housing at all economic levels, thereby advancing the interests of its citizens, taken as a whole. The City has determined that the Project, with the associated approvals complies with the plans and policies set forth in the City's Comprehensive Plan and zoning regulations, as amended.

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

I. These Recitals use certain terms with initial capital letters that are defined in Section 1 of this Agreement. City and Owner intend to refer to those definitions when the capitalized terms are used in these Recitals.

J. These recitals are intended in part to paraphrase and summarize this Agreement, however, the Agreement is expressed below with particularity and the Parties intend that their rights and obligations be determined by those provisions and not by the Recitals.

K. Following a duly noticed public hearing, this Development Agreement was approved by the City Council of the City by Ordinance No. [REDACTED], which was introduced on [REDACTED], and finally adopted on [REDACTED], and became effective thirty (30) days thereafter, and was duly executed by the parties as of [REDACTED] (the "Effective Date").

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

ARTICLE I — DEFINITIONS

1.1 Definitions

In this Agreement, unless the context otherwise requires:

"Agreement" is defined in the Preamble.

"Annual Review" is defined in Section 8.1.

"Applicable Rules" means the City ordinances, resolutions, rules, regulations and official policies in effect on the Effective Date, as amended by the Existing Approvals.

"Approvals" means all Existing Approvals and Subsequent Approvals, as those terms are defined herein.

“Architectural Review Approval” means the approval of an application for architectural review under the Applicable Rules.

“Ash Building” means the existing 4,707 sf building located at 3201-3225 Ash Street.

“BMR/Park Dedication Parcel” means the approximately 3.25 acres of land to be offered for dedication and dedicated to the City pursuant to applicable provisions of this Agreement, currently expected to be developed, at City’s sole cost and discretion, as affordable housing (on an approximately one (1) acre portion thereof) and parkland (on an approximately 2.25 acre portion thereof) in the approximate location shown on the Tentative Map.

“Cannery” means the existing historic cannery building at 200-380 Portage Avenue/3200 Park Boulevard.

“Cannery Architectural Review Approval” is defined in Recital F.

“CEQA” is defined in Recital F.

“City” means the City of Palo Alto, a chartered city of the State of California.

“City Party” is defined in Section 14.8.

“Claims” is defined in Section 14.8.

“Commencement of Townhome Construction” means the issuance of building permits to construct the Townhomes. This does not include permits that are exclusively for site preparation.

“Comp Plan Amendment” is defined in Recital F.

“Compliance Notice” is defined in Section 9.2(c).

“Comprehensive Plan” means the 2030 Palo Alto Comprehensive Plan, adopted in November 2017 and in effect as of the Effective Date, as amended by the Existing Approvals.

“Days” means calendar days.

“Development Agreement” shall mean this Agreement.

“Development Impact Fees” means all fees now or in the future collected by the City from applicants for new development (including all forms of approvals and permits necessary for development) for the funding of public services, infrastructure, improvements or facilities, but not including taxes or assessments, regulatory in-lieu fees such as the public art in-lieu fee, or fees for processing applications or permits or for design review. The fees included in this definition include, but are not limited to those fees set forth in Chapters 16.58 and 16.59 of the Municipal Code, fees for traffic improvements and mitigation, and fees for other community facilities or related purposes (but not including any school fees imposed by a school district); provided nothing herein shall preclude City from collecting fees lawfully imposed by another entity having jurisdiction which City is required or authorized to collect pursuant to State law.

“Discretionary Action” includes a “Discretionary Approval” and is an action or decision which requires the exercise of judgment, deliberation, and which contemplates the imposition of revisions or conditions, by City, including the City Council or any board, commission or department and any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from an activity which merely requires City, including the City Council or any board, commission or department and any officer or employee thereof, to determine whether there has been compliance with applicable statutes, ordinances, regulations, or Conditions of Approval.

“Effective Date” is defined in Recital K.

“EIR” is defined in Recital F.

“Existing Approvals” is defined in Recital F.

“Expiration Date” means the 10th anniversary of the Effective Date, except as extended pursuant to Section 3.3.

“Historic Covenant” is defined in Section 5.2.

“Final Map” is defined in Section 5.3.

“LNCU Dispute” is defined in Recital D.

“MMRP” is defined in Recital F.

“Mortgage” means and refers, singly and collectively, to any mortgages, deeds of trust, security agreements, assignments and other like security instruments encumbering all or any portion of the Property or any of Owner’s rights under this Agreement.

“Mortgagee” means and refers to the holder of any Mortgage encumbering all or any portion of the Property or any of the Owner’s rights under this Agreement, and any successor, assignee or transferee of any such Mortgage holder.

“Notice of Breach” is defined in Section 9.2(a).

“Operating Memorandum” is defined in Section 10.4(a).

“Owner” means SI 45, LLC, a Delaware limited liability company.

“Park Building” means the existing approximately 11,762 sf building located at 3250 Park Boulevard (and formerly referred to as the “Audi” Building).

“Parking Garage” means the new structured (one level above grade) parking garage shown on the Cannery Architectural Review Approval that will allow relocation of most of the existing surface parking for the Cannery as required by the Approvals.

“Party” means a signatory to this Agreement, or a successor or assign of a signatory to this Agreement.

“Permitted Delay” is defined in Section 3.2.

“Planning Director” means the Director of the City’s Department of Planning and Development Services.

“Public Benefit Fee” means the monetary payment by Owner to the City for City’s use towards parkland improvement and/or provision of affordable housing, in the City’s sole discretion as set forth in Section 5.8(b).

“Prevailing Wage Laws” is defined in Section 14.8.

“Project” means proposed redevelopment of the Property in accordance with the Applicable Rules, Approvals, and this Agreement, which is generally described as follows:

- (i) Construction of the Parking Garage to facilitate dedication of the BMR/Parkland Dedication Parcel (including relocation of an existing above ground powerline);
- (ii) Restoration/rehabilitation of the Remaining Cannery, retaining the same area of existing R&D uses in the Cannery but relocated into the Remaining Cannery and including the Retail/Display and Outdoor Seating Area;
- (iii) Removal of approximately 84,000 sf of the Cannery to accommodate development of the Townhomes;
- (iv) Merger and resubdivision of the Property into five parcels (Remaining Cannery (Lot 3), Townhomes (Lot 1), Ash Building (Lot 4), Park Building (Lot 5) and BMR/Park Dedication Parcel (Lot 2) to facilitate the Project and dedication of the BMR/Park Dedication Parcel to the City for affordable housing and park purposes;
- (v) Retention of the existing office uses of the Ash Building;
- (vi) Retention and conversion of the existing Park Building from the current automotive uses to R&D use; and
- (vii) Development of the Townhomes.

“Property” is defined in Recital C.

“Retail/Display and Outdoor Seating Area” shall mean approximately 2,600 sf of new ground floor retail in the Remaining Cannery with: (1) public view opportunities to the monitor roof portion/internal truss system of the Remaining Cannery, (2) an exhibit of historic information about the Cannery, and (3) outdoor landscaped seating area, all as further defined on the Cannery Architectural Review Approval and pursuant to Section 5.2.

“Remaining Cannery” shall mean that portion of the Cannery remaining after approximately 84,000 square feet are demolished on the northeast end of the building, as shown on the Cannery Architectural Review Approval.

“Research and Development” or “R&D” shall mean the land use defined in Palo Alto Municipal Code section 18.04.030(a)(123) as that section read on the Effective Date.

“R&D Relocation” is defined in Section 4.3(a).

“Rezoning Ordinances” is defined in Recital F.

“SB 330 Residential Project” is defined in Recital D.

“Subsequent Applicable Rules” means the ordinances, resolutions, rules, regulations and official policies of City, as they may be adopted and effective after the Effective Date that do not conflict with the Applicable Rules, or that are expressly made applicable to the Project by this Agreement.

“Subsequent Approvals” is defined in Section 4.2.

“Switch Building” means those certain premises consisting of approximately 1,650 square feet of building space located at the end of the driveway adjacent to 270 Lambert Street, currently leased to Comcast of California IX, Inc.

“TDM” is defined in Recital E.

“TDM Plan” is defined in Recital F.

“Tentative Map” is defined in Recital F.

“Term” is defined in Section 3.1.

“Townhomes” means the 74 market rate, for-sale townhome-style 3- and 4-bedroom residential units and related infrastructure, landscaping and circulation proposed as part of the Project as shown on the Townhomes Architectural Review Approval.

“Townhomes Architectural Review Approval” is defined in Recital F.

“TPA Agreement” is defined in Recital D.

ARTICLE II - PROPERTY SUBJECT TO THE DEVELOPMENT AGREEMENT; BINDING EFFECT; NEGATION OF AGENCY

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

2.2 **Binding Effect.** Except as otherwise expressly provided herein, the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, the Parties and their respective assigns, heirs, or successors in interest.

2.3 **Negation of Agency.** The Parties acknowledge that, in entering into and performing this Agreement, each Party is acting as an independent entity and not as an agent of the other in

any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as making City and Owner joint-venturers or partners.

ARTICLE III — TERM; FORCE MAJEURE; CANCELLATION

3.1 **Basic Term.** The term of this Agreement (the “Term”) shall commence as of the Effective Date and, unless earlier terminated in accordance with the terms hereof, shall continue in full force and effect until the Expiration Date. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any outstanding obligation which was required to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement that has occurred prior to such termination or with respect to any obligations or rights that are specifically set forth as surviving this Agreement.

3.2 **Force Majeure.** Performance by either Party of an obligation hereunder shall be excused during any period of “Permitted Delay.” Permitted Delay shall mean delay beyond the reasonable control of a Party including, without limitation, war; insurrection; strikes and labor disputes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; pandemics; epidemics; quarantine and public health restrictions; freight embargoes; legal challenges to this Agreement, legal challenges to the Project Approvals, or legal challenges to any other approval required from any public agency other than the City for the Project, or any initiatives or referenda regarding the same; environmental conditions, pre-existing or discovered, delaying the construction or development of the Property or any portion thereof; and moratorium as set forth in Section 3.3, so long as the Party claiming a Permitted Delay is acting diligently and in good faith. A Party’s financial inability to perform shall not be a ground for claiming a Permitted Delay. The Party claiming the Permitted Delay shall notify the other Party of its intent to claim a Permitted Delay, the specific grounds of the same and the anticipated period of the Permitted Delay within 10 business days after (i) the occurrence of the conditions which establish the grounds for the claim and (ii) the affected Party’s actual knowledge of such occurrence. The period of Permitted Delay shall last no longer than the conditions preventing performance.

3.3 **Extension of Term Due to Moratoria.** In the event of any publicly declared moratorium that applies to the Project under the terms of this Agreement or other interruption in the issuance of permits, approvals, agreements to provide utilities or services or other rights or entitlements by any State, or Federal governmental agency, or public utility which could postpone the construction of improvements at the Project, the term of this Development Agreement shall be extended without further act of the parties by a period equal to the duration of any such moratorium or interruption; provided, however, the total term extension under this Section 3.3 shall not exceed a total of two (2) years. Nothing in this Section is intended, however, to confer on City or any related agency any right to impose any such moratorium or interruption.

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

ARTICLE IV — DEVELOPMENT OF THE PROPERTY

4.1 **Vested Development Rights.** City hereby grants Owner the vested right to develop the Project for the Term of this Agreement in accordance with and subject to: (a) the terms and conditions of this Agreement and the Approvals and any amendments to any of them as shall, from time to time, be approved pursuant to this Agreement; and (b) the Applicable Rules (as defined in Section 1). Nothing contained herein shall restrict the City's discretion to approve, conditionally approve, or deny amendments or changes to the Approvals proposed by Owner. Except as is expressly provided otherwise in this Agreement, no future modifications of the following shall apply to the Project:

- (a) the City Comprehensive Plan or a Coordinated Area Plan,
- (b) the Palo Alto Municipal Code,
- (c) applicable laws and standards adopted by the City which purport to: (i) limit the use, subdivision, development density, design, parking ratio or plan, schedule of development of the Property or the Project in a manner inconsistent with this Agreement and the Approvals; or (ii) impose new dedications, improvements, other exactions, design features, or moratoria upon development, occupancy, or use of the Property or the Project; or
- (d) any other Applicable Rules.

Notwithstanding Section 18.77.090, and to the extent permitted by state law, including the Subdivision Map Act (Gov. Code §§ 66410 et seq.), the Existing Approvals and Subsequent Approvals shall be extended and shall not expire during the Term of this Agreement. In the event any Approval expires by operation of law during the term of this Agreement, City agrees that it will accept, process, and review in good faith and in a timely manner a new application that is consistent with the expired Approval, which application shall be governed by the Applicable Rules.

4.2 **Subsequent Approvals.**

Certain subsequent land use approvals, entitlements, and permits other than the Existing Approvals, will be necessary or desirable for implementation of the Project ("Subsequent Approvals"). The Subsequent Approvals may include, without limitation, the following: amendments of the Approvals, final map(s), demolition permits, grading permits, building permits, sewer and water connection permits, certificates of occupancy, and any amendments to, or repealing of, any of the foregoing. The conditions, terms, restrictions, and requirements for such Subsequent Approvals shall be in accordance with the Applicable Rules (except as otherwise provided in Article VII) and shall not prevent development of the Property for the uses provided under the Approvals, the Applicable Rules, and this Agreement ("Permitted Uses"), or reduce the density and intensity of development, or limit the rate or timing of development set forth in this Agreement, as long as Owner is not in default under this Agreement.

Any subsequent discretionary action or discretionary approval initiated by Owner that is not otherwise permitted by or contemplated in the Approvals or which changes the uses, intensity, density, or building height or decreases the lot area, setbacks, parking or other entitlements

permitted on the Property shall be subject to the rules, regulations, ordinances and official policies of the City then in effect and City reserves full and complete discretion with respect to any findings to be made in connection therewith.

4.3 Sequence of Development.

The Parties acknowledge and agree that, given the existing uses and leases of the Property, certain elements of the Project will need to be approved, developed and implemented in the following certain order:

(a) Construction of the Parking Garage (including the necessary relocation of an existing City of Palo Alto Utilities above-ground powerline) to allow the relocation of the existing surface parking serving the Cannery Building, Ash Building and Switch Building and (b) relocation of R&D space (for the relocation of existing R&D tenants or new R&D tenants) to the Remaining Cannery, including all necessary associated interior historic restoration and tenant improvements (to warm shell condition) to prepare for the demolition of a portion of the Cannery to accommodate the Townhomes ("R&D Relocation"). It is noted that the construction of the Parking Garage will cause vibration so in the event the Parking Garage construction commences before or during the work on the Remaining Cannery, the Parties will work in good faith to review and confirm that the Remaining Cannery's condition is appropriate to withstand such vibration while construction continues as concurrently as possible.

(b) Demolition of the portion of the Cannery Building necessary to accommodate the Townhomes and ensure no buildings located on the future new property line and completion of the exterior and any remaining interior historic restoration, Retail/Display and Outside Seating Area.

(c) Recordation of final map(s) including dedication of the BMR/Park Dedication to the City, pursuant to Sections 5.3 and 6.2, and then;

(d) Construction of the Townhomes (as dictated by the market);

(e) Conversion of the Park Building to R&D uses may occur at any time, as dictated by the market, subject to the City's remedies in Exhibit C and Section 9.1.

4.4 Permitted Uses.

The permitted uses of the Property during the Term of this Agreement shall be as follows and as may be further defined in the applicable Rezoning Ordinances :

(a) Research and Development uses shall be permitted for up to approximately 142,774 square feet of the Cannery on Lot 3, within the existing Cannery until redevelopment and within the Remaining Cannery after redevelopment consistent with the Approvals.

(b) Approximately 2,600 square feet of the Remaining Cannery on Lot 3 shall be dedicated to the Retail Use/Display and Outdoor Seating Area consistent with Section 5.2.

(c) Most uses permitted within the ROLM District (including office uses) shall be permitted for up to 4,707 square feet in the Ash Office Building on Lot 4.

(d) Multiple family residential uses shall be permitted on Lot 1 in a manner consistent with the proposed Townhomes.

(e) Research and Development uses shall be permitted for up to 11,762 square feet at the Park Building on Lot 5 pursuant to Section 5.6.

ARTICLE V — OWNER PROMISES

5.1 Construction of the Parking Garage and R&D Relocation.

Within the deadlines set forth on Exhibit C, Owner will have submitted a good faith application and all applicable processing fees for the necessary ministerial permits (e.g., demolition, grading, building) to (a) relocate the existing City of Palo Alto Utilities above-ground powerline, (b) construct the Parking Garage and (c) complete the R&D Tenant Relocations within the Remaining Cannery consistent with the Approvals, including all applicable compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties, and (d) demolish the applicable portion of the Cannery, all consistent with the Approvals.

After all necessary permits are issued, and within the deadlines set forth on Exhibit C, Owner will have commenced and diligently complete, as concurrently as possible, (a) relocation of the existing City of Palo Alto Utilities above-ground powerline, (b) construction of the Parking Garage and (c) the R&D Relocation within the Remaining Cannery consistent with the Approvals, including all requirements of the Cannery Architectural Review Approval.

Until such time as the BMR/Park Dedication Parcel has been created and offered to the City pursuant to this Agreement, Owner will not voluntarily enter any new R&D Lease or additional extension of an Existing R&D Lease without including a clear acknowledgement and acceptance by such tenant of this Development Agreement, including the City's remedies hereunder set forth in Section 9.1 and Exhibit C.

5.2 Demolition of Portion of Cannery and Completion of Retail/Display and Outdoor Seating Area.

After the R&D Relocations and Parking Garage are complete, within the deadlines set forth in Exhibit C, Owner will have commenced and diligently completed demolition of the applicable portion of the Cannery and completed all related internal and external historic restoration/rehabilitation and the Retail/Display and Outdoor Seating Area consistent with the Approvals, including issuance by the City of all necessary final inspections. For purposes of this section, "complete and operational" shall mean that the City has issued final inspections or certificates of occupancy for the Parking Garage and final inspections and temporary certificates of occupancy for the R&D Relocation. Final certificates of occupancy for the R&D Relocation shall be issued after demolition and all related work under this Section 5.2 are complete.

Prior to final certificates of occupancy for the R&D Relocation, City and Owner will develop a recordable restrictive covenant ("Historic Covenant") on the Remaining Cannery

Building, including the Retail/Display and Outdoor Seating Area, for the benefit of the City, which will run with the land and be binding on successors and assigns of the Owner, in a form approved by the City Attorney, to ensure that the Remaining Cannery Building will be held, pledged, mortgaged and leased subject to and all of the following:

- Rehabilitation and maintenance of the essential elements of the Remaining Cannery as provided in the Cannery Architectural Review Approval and MMRP.
- The use of the Retail/Display and Outdoor Seating Area as provided in the Rezoning Ordinance.
- Terms related to reasonable public opportunities to view the interior roof trusses during any tenant's business hours (to be set by the tenant) in a manner that supports the tenant's operations, including but not limited to reasonable accommodation for the hours appropriate for the nature of the tenant's business, staffing, maintenance closures, reasonable number of private events, normal business requirements and events of force majeure typical to a commercial lease. The covenant will not contain any affirmative obligation to operate, provided, however, that while occupied by a tenant, the space shall be open to the public for a minimum of 100 hours per month averaged over a calendar year.
- A reasonable process for the development, installation, modification and replacement of an interpretive historic display(s) both in the interior and/or exterior of the Retail/Display and Outdoor Seating Area consistent with the Cannery Architectural Review Approval to support and accommodate a commercial tenant's operations, including reasonable times for review and response to support the tenant's operations.
- Reasonable review and approval of minor modifications of the covenant by the Planning Director and identification of material modifications that require City Council approval.
- In the event the interior portion of the Retail/Display and Outdoor Seating Area is not subject to a lease and closed to public access for a period of six consecutive months following the initial certificate of occupancy, or sixty consecutive days from the last day of occupancy by a tenant, and there are no active lease negotiations nor reasonable expectation of entering a lease, the Owner will offer to the City a non-exclusive, revocable license to provide, at the City's sole cost and expense, opportunities for members of the public to enter the interior space. The license terms will include obligations for the City to staff and secure the space against damage, loss, and third-party claims. The license will also provide for termination with 30 days' notice in the event the Owner engages in negotiations for a lease with a tenant. The license will not provide the City with any right to make any changes or improvements to the space (AS IS/WHERE IS condition).
- Owner notice to the City following the termination of any tenancy.

- In the event the interior portion of the Retail/Display and Outdoor Seating Area is not subject to a lease and closed to public access for a period of over two consecutive years (from either the initial certificate of occupancy or from the last day of occupancy by a tenant) and there is no active lease negotiations and no reasonable expectation of entering a lease, the Owner will offer to the City the option (at the City's sole discretion) to enter a \$1 dollar per year lease, on otherwise standard triple net lease terms with the City, for a period to be set by the City and Owner for the City to provide, at its sole cost and expense, opportunities for members of the public to enter the interior space. The lease terms will include obligations to staff and secure the space against damage, loss and third party claims. The lease will not provide any right for the City to make any changes to the space without the prior written consent of the Owner, in Owner's sole and absolute discretion. The lease will include the length of the initial term and potential extension(s).

To ensure the Owner's ability to meet any lease obligations, the City will not withhold temporary certificates of occupancy for the R&D Relocation so long as the Owner is cooperating in good faith to complete and record the Historic Covenant.

5.3 Recordation of Final Map and Dedication of BMR/Parkland Dedication Parcel.

Promptly after the Parking Garage and demolition are both complete (removing the structure from the proposed new property line and relocating the surface parking) and within the deadlines set forth in Exhibit C, Owner will promptly submit and process for recordation one or more final maps (each a "Final Map") that creates, at a minimum: (a) the Townhome Parcel; (b) the BMR/Parkland Dedication Parcel for acceptance by the City pursuant to the terms of this Agreement; and (c) all necessary easements for a multimodal connection from Portage Avenue to Park Boulevard, consistent with the City's Bicycle and Pedestrian Master Plan or the Approvals. Conveyance to the City of the BMR/Parkland Dedication Parcel will be accomplished solely by means of City's acceptance, as shown on the Final Map or subsequently thereto, of Owner's offer of dedication as shown on the Final Map of the BMR/Parkland Dedication Parcel. In no event shall City require of Owner, nor be entitled to receive from Owner, dedication of the BMR/Parkland Dedication Parcel by means of a separate grant deed or other separate instrument of conveyance.

5.4 Environmental Conditions.

[Placeholder: Additional detail forthcoming regarding cleanup standards and parties' obligations under this section based on review and input from City and Owner's environmental consultants].

5.5 Switch Building.

To the extent feasible and desirable to the City, Owner shall facilitate assignment to the City of any existing lease of the Switch Building concurrent with acceptance of the BMR/Parkland Dedication Parcel by the City and a full release of Owner upon transfer. Owner shall have no

obligation to modify any existing lease (other than to document an assignment to the City as the new fee owner) or incur any additional costs or liability related to the Switch Building for conveyance. Prior to conveyance to the City of the BMR/Parkland Dedication Parcel, Owner shall not voluntarily enter into or extend a lease of the Switch Building without first consulting the City.

5.6 Development of Townhomes and Park Building.

Following demolition of the portion of the Cannery, recordation of the final map that includes the Townhomes and offer of dedication of the BMR/Parkland Dedication Parcel to the City, and issuance of all applicable ministerial permits, and as otherwise dictated by the market, Owner (or Owner's assignee) may begin construction and complete the Townhomes consistent with the Approvals. Owner shall make good faith efforts to effectuate development of the Townhomes as soon as commercially practical. For each year, as part of Article VIII (Annual Review), following creation of the Townhome parcel in which construction of the townhomes has not commenced, Owner shall provide the City with a summary of its efforts to market the Townhomes and an analysis of market conditions related to the Townhomes.

Owner shall incorporate or cause to be incorporated into the Covenants, Conditions, and Restrictions for the Townhomes a condition prohibiting members of the homeowners' association from participating in any Residential Preferential Parking District that includes the Townhome parcel.

Subject to the City's remedies in Exhibit C and Section 9.1, Owner may complete, at any time dictated by the market, the conversion of use of the Park Building from automotive to R&D. At all times following demolition of the portion of the Cannery and before the Commencement of Townhome Construction, Owner shall secure the Townhome Parcel, and ensure that it is free of public nuisances. If any issues arise with maintenance, the City and Owner shall meet and confer regarding the appearance and maintenance of the site.

5.7 Transportation Demand Management Program.

New non-residential uses on the Property (applicable to new tenants after the termination of the existing leases as of the Effective Date) shall be subject to the TDM Program that achieves a 15% reduction in single-vehicle-occupancy trips consistent with the Approvals. In addition, Owner shall implement, for tenants under existing leases as of the Effective Date, those elements of the TDM Program that may be implemented by Owner without a lease amendment. The TDM Program contains contingency provisions to ensure the program can be modified as appropriate over time and the City's approval of requested modifications to the TDM Program will not be unreasonably withheld or delayed.

5.8 Payment of Fees.

(a) Development Fees, Assessments, Exactions, and Dedications. Except as provided herein, Owner shall pay all applicable City fees, including processing fees, Development Impact Fees, in-lieu fees, water and sewer connection and capacity charges and fees; assessments; dedication formulae; and taxes payable in connection with the development, build-out, occupancy, and use of the Project that apply uniformly to all similar developments in the City at the rates in effect at the time Owner applies for a building permit approval in connection with the Project

(regardless of whether such fees, assessments, dedication formulae or taxes became effective before, on or after the Effective Date). Provided, however, Owner shall not be required to pay any new or increased Development Impact Fees adopted after the Effective Date, with the exception of increases to adjust for inflation. Additionally, Owner may elect to defer payment of Development Impact Fees for the Townhomes until construction of the Townhomes, in which case the Development Impact Fees shall be paid on a pro-rata basis (1/74th) at final inspection for each residential unit.

City shall accept the dedication of the BMR/Parkland Dedication Parcel pursuant to Sections 5.3 and 6.2 and payment of the Public Benefit Fee as set forth in Section 5.8(b) in full and complete satisfaction of any and all parkland dedication requirements under Palo Alto Municipal Code Chapter 21.50 and inclusionary housing requirements under Chapter 16.65. The City acknowledges and understands that the Owner intends to market the Townhomes to third party homebuilders and that the necessary credits and documentation will be assignable to such builder(s).

(b) Public Benefit Fee. Owner shall also pay a \$5 million (\$5,000,000.00) Public Benefit Fee to the City for its use toward affordable housing or parkland improvement in the City's sole discretion. Owner may elect to defer payment of the Public Benefit Fee until construction of the Townhomes, in which case it shall be paid on a pro-rata basis (1/74th) at final inspection for each residential unit. However, if Commencement of Townhome Construction has not occurred within 5 (five) years of the City's acceptance of the BMR/ Parkland Dedication Parcel, the Public Benefit Fee shall be increased in accordance with the increase in the Construction Cost Index for the San Francisco Bay Area from the Effective Date to the date of payment or partial payment, until payment in full. If final inspections for the Townhomes have not been approved by the Expiration Date, Owner shall pay the full Public Benefit Fee to the City on or before the Expiration Date. The City acknowledges and understands that the Owner intends to market the Townhomes to third party homebuilders and that the obligation to pay the Public Benefit Fee will be assignable to such builder(s) pursuant to Article XII.

ARTICLE VI — CITY PROMISES

6.1 Processing of Subsequent Approvals

Provided Owner is not in default of this Agreement, City shall promptly accept, review and shall not deny or unreasonably delay any Subsequent Approval, including all ministerial permits and inspections, necessary to the exercise of the rights vested in the Owner by this Agreement and all permits and approvals necessary to relocate the existing above-ground powerline necessary for construction of the Parking Garage. The Parties acknowledge and agree that the City's compliance with this obligation directly and materially relates to the Owner's ability to timely perform its obligations under this Agreement.

6.2 Acceptance of BMR/Parkland Dedication Parcel

Provided Owner is not in default under this Agreement, and subject to Section 5.3, City shall expeditiously and in good faith review and accept Owner's offer of dedication for the BMR/Parkland Dedication Parcel as such offer is set forth on the Final Map. Following such offer

of dedication, City shall promptly review and act upon any Subsequent Approvals for the Townhomes, whether or not the City has completed its review and acceptance of the BMR/Parkland Dedication Parcel. The Parties further acknowledge and agree that: (a) subject only to, and without limiting, the provisions of Section 5.4 and this Section 6.2, Owner makes no representation or warranty, express or implied, regarding the title, physical, environmental, or legal condition of BMR/Parkland Dedication Parcel or its fitness or suitability for any particular purpose or use and City accepts dedication, title, and ownership of the BMR/Parkland Dedication Parcel in its “AS IS” and ‘WITH ALL FAULTS’ condition; (b) City shall not be required to accept title to the BMR/Parkland Dedication Parcel subject to any deeds of trust or other monetary liens or encumbrances; (c) without limiting the foregoing, City accepts dedication, title, and ownership of the BMR/Parkland Dedication Parcel subject to (i) all matters of record, including easements, encumbrances, covenants, conditions, restrictions, reservations, and rights-of-way; (ii) installments of general and special real property taxes and assessments not then delinquent; (iii) any encumbrance or possessory interest arising from the acts of City; and (iv) matters that would have been disclosed by an inspection or a survey; and (d) except as otherwise expressly set forth in this Agreement, City shall be solely responsible for all costs and expenses attendant upon the transfer of title to the BMR/Parkland Dedication Parcel from Owner to City.

ARTICLE VII - EXCEPTIONS AND EXCLUSIONS

7.1 Subsequent Applicable Rules

Notwithstanding anything to the contrary in this Agreement, the following Subsequent Rules that are adopted on a general, City-wide or North Ventura Area-wide basis shall apply to development of the Property (“Subsequent Applicable Rules”):

(a) Subsequent Rules that relate to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure imposed at any time, provided such Subsequent Rules are uniformly applied throughout the City or the North Ventura Coordinated Area Plan area to all substantially similar types of development projects and properties, and such procedures are not inconsistent with procedures set forth in the Approvals or this Agreement.

(b) Subsequent Rules that are determined by City to be reasonably required in order to protect occupants of the Project, and/or residents of the City, from a condition dangerous to their health or safety, or both. This Section 7.1 is not intended to be used for purposes of general welfare or to limit the intensity of development or use of the Property but to protect and recognize the authority of the City to deal with material endangerments to persons on the Property not adequately addressed in the Approvals.

(c) Subsequent Rules that do not conflict with the Applicable Rules, this Agreement or the Approvals, provided such Subsequent Rules are uniformly applied throughout the City or the North Ventura Coordinated Area Plan area to all substantially similar types of development projects and properties; and

(d) Other Subsequent Rules that do not apply to the Property and/or the Project due to the limitations set forth above, but only to the extent that such Subsequent Rules are accepted in writing by Owner in its sole discretion.

7.2 Supervening Rules of Other Governmental Agencies

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

7.3 Building Codes.

The Project shall be constructed in accordance with the provisions of the California Building Code, Green Building Code, Mechanical, Plumbing, Electrical, and Fire Codes as adopted and amended by the City, City standard construction specifications and Title 24 of the California Code of Regulations, relating to building standards, in effect at the time of approval of the appropriate building, grading or other construction permits for the Project. Those codes, as modified from time to time, are Subsequent Applicable Rules.

7.4 Utility Services.

This Agreement does not limit the power and right of the City to adopt and amend from time to time rules and procedures governing the provision and use of utility services provided by the City. These rules, as modified from time to time, are Subsequent Applicable Rules.

7.5 No General Limitation of Future Exercise of Power

This Agreement does not limit the power and right of the City to adopt and amend from time to time rules and procedures governing the provision and use of utility services provided by the City.

7.6 Alternative Approvals.

Notwithstanding any provisions in this Development Agreement, Owner may apply for, and the City may thereafter review and grant, in accordance with applicable law: (i) amendments

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

ARTICLE VIII - ANNUAL REVIEW

8.1 Annual Review.

The annual review required by California Government Code, Section 65865.1 shall be conducted pursuant to Resolution No. 7104 by the City’s Planning Director every twelve (12) months from the Effective Date for compliance with the provisions hereof (the “Annual Review”). The Planning Director shall notify Owner in writing of any evidence which the Planning Director deems reasonably required from Owner in order to demonstrate good-faith compliance with the terms of this Development Agreement. Such annual review provision supplements, and does not replace, the provisions of Article IX below whereby either the City or Owner may, at any time, assert matters which either party believes have not been undertaken in accordance with this Development Agreement by delivering a written Notice of Breach and following the procedures set forth in said Section 9.2. Owner shall pay the City’s actual costs for its performance of the Annual Review, including staff time if and to the extent that more than two (2) hours of staff time is required to perform the annual review.

ARTICLE IX - DEFAULT, REMEDIES, TERMINATION

9.1 **Remedies for Breach.** City and Owner acknowledge that the purpose of this Development Agreement is to carry out the parties’ objectives and local, regional, and Statewide objectives by developing the Project. The parties acknowledge that City would not have entered into this Development Agreement had it been exposed to damage claims from Owner for any breach thereof. As such, the parties agree that in no event shall Owner be entitled to recover any actual, consequential, punitive, or other monetary damages against City for breach of this Development Agreement. Therefore, City and Owner agree that, in the event of a breach of this Development Agreement, each of the parties hereto may pursue the following: (a) specific performance; (b) suits for declaratory or injunctive relief; (c) suits for mandamus or special writs; or (d) cancellation of this Development Agreement and Approvals, as set forth in Exhibit C. In addition to the foregoing remedies, City shall be entitled to recover monetary damages with respect to actual monetary amounts payable by Owner under this Development Agreement. In no event will the City be entitled to consequential or punitive damages from Owner. All of the above remedies shall be cumulative and not exclusive of one another, and the exercise of any one (1) or

more of these remedies shall not constitute a waiver or election with respect to any other available remedy.

9.2 Notice of Breach.

(a) Prior to the initiation of any action for relief specified in Section 9.1 above because of an alleged breach of this Development Agreement, the party claiming breach shall deliver to the other party a written notice of breach (a “Notice of Breach”). The Notice of Breach shall specify with reasonable particularity the reasons for the allegation of breach and the manner in which the alleged breach may be satisfactorily cured.

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

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

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

ARTICLE X — AMENDMENTS

10.1 Modification Because of Conflict with State or Federal Laws.

(a) In the event that State or Federal laws or regulations enacted after the Effective Date of this Development Agreement prevent or preclude compliance with one (1) or more provisions of this Development Agreement or require changes in plans, maps, or permits approved by City, such modifications shall be governed by the provisions of Section 4.2 and Article VII. Any such amendment or suspension of this Development Agreement shall be approved by the City Council in accordance with the City Code and this Development Agreement and by Owner.

(b) In the event changes in State or Federal laws or regulations substantially interfere with Owner’s ability to carry out the Project, as the Project has been approved, or with the ability of either party to perform its obligations under this Development Agreement, the parties

agree to negotiate in good faith to consider mutually acceptable modifications to such obligations to allow the Project to proceed as planned to the extent practicable.

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

10.3 **City Costs for Review.** During the Term of this Development Agreement, Owner shall promptly reimburse City for costs incurred by City to have its staff, consultant, or outside counsel review, approve, or issue assignments, estoppel certificates, transfers, amendments to this Development Agreement, and the like. Owner's obligations under this Section 10.3 shall survive expiration or earlier termination of this Development Agreement.

10.4 **Minor Amendments.**

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

(b) Notwithstanding the provisions of Section 10.5, and by way of illustration but not limitation of the above criteria for an Operating Memorandum, any refinement of this Development Agreement which does not affect: (a) the Term of the Development Agreement as provided in Section 3.1; (b) the right to develop, and Permitted Uses of, the Property as provided in this Development Agreement; (c) the general location of on-site and off-site improvements; (d) the density or intensity of use of the Project; (e) the maximum height or size of proposed buildings; (f) monetary contributions by Owner as provided in this Development Agreement; or (g) material modifications to public view opportunities of the monitor roofs/interior trusses of the Cannery Building or material modifications to essential historic elements of the Cannery Building as defined in Section 5.2, shall be deemed suitable for an Operating Memorandum and shall not, except to the extent otherwise required by law, require notice or public hearing before either the Planning Director or the City Council before the parties may execute the Operating Memorandum; provided, that such amendment shall first be approved by Owner and the Community Development Director (or if the City does not then have a Planning Director, then by the holder of the position which includes the majority of the planning responsibilities held, as of the date of this Development Agreement, by the Planning Director); and provided further, that the Planning Director (or substitute) in consultation with the City Attorney shall make the determination on behalf of City whether a requested refinement may be effectuated pursuant to this Section 10.4 or whether the

requested refinement is of such a character to constitute an major modification hereof pursuant to Section 10.5. The Planning Director (or substitute) shall be authorized to execute any Operating Memoranda hereunder on behalf of City. Minor modifications to the Project as to the location, operational design, or requirements for maintenance of improvements shall be suitable for treatment through Operating Memoranda subject to the provisions of this Section 10.4, and not “major modifications” subject to the provisions of Section 10.5.

10.5 **Amendment of Approvals.** Approval of any major modifications to the Project or Approvals requires City Council approval and the approval of Owner. Any of the following amendments to Approvals shall be deemed a “major modification” and shall require an amendment of this Development Agreement: (a) the term of the Development Agreement as provided in Section 3.1; (b) the right to develop, and Permitted Uses of, the Property as provided in this Development Agreement; (c) the general location of on-site and off-site improvements; (d) the density or intensity of use of the Project; (e) the maximum height or size of proposed buildings; (f) monetary contributions by Owner as provided in this Development Agreement; or (g) material modifications to the public view opportunities of the monitor roof/interior trusses of the Cannery Building or material modifications to essential historic elements of the Cannery Building as defined in Section 5.2. Such amendment shall be limited to those provisions of this Development Agreement, which are implicated by the amendment of the Approvals. Any other amendment of the Approvals shall not require amendment of this Development Agreement unless the amendment of the Approvals relates specifically to some provision of this Development Agreement.

ARTICLE XI — COOPERATION AND IMPLEMENTATION

11.1 **Cooperation.** It is the parties’ express intent to cooperate with one another and to diligently work to implement this Agreement in a manner that ensures that all Parties realize the intended benefits of the Agreement.

11.2 City Processing.

(a) **By City.** City will not use its discretionary authority in considering any application for a Subsequent Approval to change the policy decisions reflected by this Development Agreement or otherwise to prevent or delay development of the Project. The City shall cooperate with Owner in a reasonable and expeditious manner, in compliance with the deadlines mandated by applicable statutes or ordinances, to complete, at Owner’s expense, all steps necessary for implementation of this Development Agreement and development of the Project in accordance herewith, including, without limitation, in performing the following functions to process the Project:

(i) Scheduling all required public hearings by the City Council, Planning Commission, Architectural Review Board, or other City bodies in accordance with the City’s regularly established meeting schedule for these bodies; and

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

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

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

ARTICLE XII — TRANSFERS AND ASSIGNMENTS

12.1 Transfers and Assignments. Owner may assign this Development Agreement with the express written consent of City, which consent shall not be unreasonably withheld, conditioned, or delayed. Owner may assign this Development Agreement in whole or in part as to the Property, in connection with any sale, transfer, or conveyance thereof, and upon the express written assignment by Owner and assumption by the assignee by an assignment and assumption agreement in substantially the form of Exhibit D, subject to prior approval of the City Manager and City Attorney, which approval shall not be unreasonably withheld or delayed, and the conveyance of Owner's interest in the Property related thereto. Upon execution of an assignment and assumption agreement, Owner shall be released from any further liability or obligation hereunder related to the portion of the Property so conveyed and the assignee shall be deemed to be the "Owner," with all rights and obligations related thereto, with respect to such conveyed property.

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

ARTICLE XIII — MORTGAGE PROTECTION; CERTAIN RIGHTS OF CURE

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

13.2 **Mortgagee Not Obligated.** Notwithstanding the provisions of Section 13.1 above, no Mortgagee shall have any obligation or duty under this Development Agreement to construct or complete the construction of improvements or to guarantee such construction or completion; provided, however, a Mortgagee shall not be entitled pursuant to this Development Agreement to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Development Agreement or otherwise under the Approvals. Nothing in this Section 13.2 shall prevent or impair the right of any Mortgagee to apply to City for the approval of entitlements to construct other or different improvements than the Project, although this Development Agreement shall not be construed to obligate City to approve such applications, and City retains full and complete discretion with respect to consideration of any such applications for approval.

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

ARTICLE XIV — GENERAL PROVISIONS

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

14.2 **Notices, Demands, and Communications between the Parties.** Formal written notices, demands, correspondence, and communications between City and Owner will be sufficiently given if dispatched by first-class mail, postage prepaid, or overnight courier, to the offices of the City and Owner indicated below. Such written notices, demands, correspondence,

and communications may be sent in the same manner to such persons and addresses as either party may from time to time designate by mail as provided in this Section:

City: City Manager
City of Palo Alto
250 Hamilton Avenue
Palo Alto, California 94301

with copies to: City Attorney
City of Palo Alto, 8th Floor
250 Hamilton Avenue
Palo Alto, California 94301

Director of Planning and Development Services
City of Palo Alto, 5th Floor
250 Hamilton Avenue
Palo Alto, California 94301

Owner: SI 45, LLC
Attn: Tim Steele and Robert Tersini
c/o The Sobrato Organization
599 Castro Street, Suite 400
Mountain View, CA 94041

With a copy to: Holland & Knight
Attn: Tamsen Plume
560 Mission Street, 19th Floor
San Francisco, CA 941051

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

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

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

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

Exhibit A	Legal Description
Exhibit B	Plat
Exhibit C	Schedule and Parties Obligations and Remedies for Default or Breach
Exhibit D	[Form of] Assignment and Assumption Agreement

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

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

14.8 **Indemnification and Hold Harmless.** Owner shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City and its elected and appointed officials, officers, employees, contractors, agents, and representatives (individually, a "City Party," and, collectively, "City Parties") from and against any and all liabilities, obligations, orders, claims, damages, fines, penalties and expenses, including reasonable attorneys' fees and costs (collectively, "Claims"), including Claims for any bodily injury, death, or property damage, resulting directly or indirectly from the development, construction, or operation of the Project and, if applicable, from failure to comply with the terms of this Development Agreement, and/or from any other acts or omissions of Owner under this Development Agreement, whether such acts or omissions are by Owner or any of Owner's contractors, subcontractors, agents, or employees; provided that Owner's obligation to indemnify and hold harmless (but not Owner's duty to defend) shall be limited (and shall not apply) to the extent such Claims are found to arise from the gross negligence or willful misconduct of a City Party. This Section 14.8 includes any and all present and future Claims arising out of or in any way connected with Owner's or its contractors' obligations to comply with any applicable State Labor Code requirements and implementing regulations of the Department of Industrial Relations pertaining to "public works" (collectively,

“Prevailing Wage Laws”), including all claims that may be made by contractors, subcontractors, or other third-party claimants pursuant to Labor Code Sections 1726 and 1781. Owner’s obligations under this Section 14.8 shall survive expiration or earlier termination of this Development Agreement.

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

14.10 **No Waiver of Police Powers or Rights.** Except as expressly provided in this Agreement, in no event shall this Development Agreement be construed to otherwise limit in any way City’s rights, powers, or authority under the police power and other powers of City to regulate or take any action in the interest of the health, safety, and welfare of its citizens.

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

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

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

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

During the Term of this Development Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 14.11 not to be true, immediately give written notice of such fact or condition to Owner.

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

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

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

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

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

During the Term of this Development Agreement, Owner shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 14.12 not to be true, immediately give written notice of such fact or condition to City.

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

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

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

14.16 **Venue.** Any legal action regarding this Development Agreement shall be brought in the Superior Court for Santa Clara County, California..

14.17 **Surviving Provisions.** In the event this Development Agreement is terminated, neither party shall have any further rights or obligations hereunder, except for those obligations of Owner which by their terms survive expiration or termination hereof, including, but not limited to, those obligations set forth in Sections 10.3 and 14.8.

14.18 **Construction of Agreement.** All parties have been represented by counsel in the preparation and negotiation of this Development Agreement, and this Development Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Development Agreement. Unless the context clearly requires otherwise: (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are

mandatory, and “may” is permissive; (d) “or” is not exclusive; (e) “includes” and “including” are not limiting; and (f) “days” means calendar days unless specifically provided otherwise.

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

Signatures to follow on next page

DRAFT

“City”:

CITY OF PALO ALTO,
a California charter city and municipal corporation

By: _____
Name: _____
Title: _____

Attest: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Name: _____
Title: _____

“Owner”:

SI 45, LLC,
a California limited liability company

By: _____

Name: _____

Title: _____

DRAFT

CALIFORNIA ALL-PURPOSE 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 }
 }
County of Santa Clara }
 } ss.

On _____, before me, _____, a Notary Public in and for said County and State, 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 is true and correct.

WITNESS my hand and official seal

NOTARY PUBLIC, STATE OF CALIFORNIA

My Commission # _____

Expires: _____

CALIFORNIA ALL-PURPOSE 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 }
 }
County of Santa Clara } ss.

On _____, before me, _____, a Notary Public in and for said County and State, 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 is true and correct.

WITNESS my hand and official seal

NOTARY PUBLIC, STATE OF CALIFORNIA

My Commission # _____

Expires: _____

EXHIBIT A
LEGAL DESCRIPTION

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

DRAFT

**EXHIBIT B
PLAT**

DRAFT

EXHIBIT C
SCHEDULE OF PARTIES' OBLIGATIONS AND
REMEDIES FOR DEFAULT OR BREACH

#	Deadline	Owner and City Phasing Obligations and Remedies
1	Ongoing from Effective Date to completion of Townhomes.	Owner to provide regular updates to the City regarding the status of the Project, permitting, construction and marketing efforts, and City to provide the Owner with regular updates regarding the status of any permits or approvals under review.
Prior to Physical Work Commencing.		
2	Within 90 Days of Effective Date	Owner has prepared and submitted applications, including all applicable application fees, for the necessary ministerial permits for Phase A as described in the Project Approvals, including (i) relocation of the City's above ground powerline, (ii) the Parking Garage, (iii) the rehabilitation/renovation of the Remaining Cannery (including the Retail/Display and Outdoor Seating Area), and (iv) demolition of the portion of the Cannery (the "Phase A Work") consistent with this Agreement and the Approvals. City's exclusive remedy for an Owner's failure to meet this deadline for this Section is termination of the Agreement and Approvals. The City will accept and process such permit applications expeditiously and in good faith pursuant to Section 6.1. Owner's exclusive remedy for the City's Default in processing is (1) specific performance and (2) an extension to this and all remaining deadlines in this schedule.
3	Within 90 days of the City issuance of a permit ready letter(s) for all Phase	Owner has Commenced Construction on the Phase A Work. For the purposes of this Section, "Commenced Construction"

#	Deadline	Owner and City Phasing Obligations and Remedies
	A work (upon Owner's payment of all applicable fees) to Owner.	means the Owner has obtained all necessary ministerial permits (including the payment of all applicable fees), entered a construction contract and started physical grading and/or site preparation work related to the Phase A Work. City's exclusive remedy for an Owner's failure to meet this deadline for this Section is termination of the Agreement and Approvals. Once Owner Commences Construction on the Phase A Work, as long as the Owner is in good faith compliance with all applicable permits related to such work, the City will no longer have the right to terminate the Approvals (as opposed to the Agreement). In the event Owner Abandons the Phase A Work, the City retains the right to terminate both the Agreement and the Approvals. For the purposes of this Section "Abandons" means the Owner has stopped all work for more than 180 consecutive days without a good faith reason, extension or Event of Force Majeure. The City will issue such permits, subject to Owner's submittal of all required plans, information and fees, expeditiously and in good faith pursuant to Section 6.1. Owner's exclusive remedy for the City's Default in issuing permits requested by Owner is (1) specific performance and (2) an extension to this and all remaining deadlines in this schedule.
After Physical Work Commences, but Prior to Recordation Final Map Creating Townhome Parcel and BMR/Park Dedication Parcel.		
4	24 months from Commencement of Construction of the Phase A Work.	Owner has completed the Parking Garage (meaning the City has issued a final inspection and cars are allowed to

#	Deadline	Owner and City Phasing Obligations and Remedies
		park in the structure in the normal course) and completed Demolition of the applicable portion of the Cannery. For the purposes of this Section “Demolition” means either that (i) the portion of the building is removed so that there is no longer a building over a new property line creating the Townhome Parcel or (ii) the City approves the recordation of the Final Map creating the Townhome Parcel with the portion of the Cannery to remain vacant and unoccupied on the property line until issuance of build permit for the Townhomes. City’s exclusive remedies for an Owner’s failure to meet this deadline for this Section are (1) specific performance; (2) termination of the Agreement, and/or (3) the City may withhold occupancy permits for New R&D uses in the Remaining Cannery, and/or Park Building. For the purpose of this Section “New” means a use that is not subject to an existing lease as of the Effective Date. If a New R&D use has occupied the Park Building (subject to the required notices to such tenant of the requirements of this Agreement), the City also has the remedy to require such user to cease any R&D use of the Park Building within three (3) years of the tenant’s initial occupancy. The City will schedule inspections and issue final inspections expeditiously and in good faith pursuant to Section 6.1. Owner’s exclusive remedy for the City’s Default in issuing final inspections is (1) specific performance and (2) an extension to this and all remaining deadlines in this schedule pursuant.

#	Deadline	Owner and City Phasing Obligations and Remedies
5	Within 60 days of City's issuance of final certificates of occupancy for all of the Phase A Work (including the Demolition of the portion of the Cannery Building as defined above).	Owner has submitted a request, with all supporting documentation and applicable fees, to the City to record a Final Map that includes both the creation of the Townhome Parcel and the BMR/Park Dedication Parcel consistent with this Agreement and the Approvals. City's exclusive remedies for an Owner's failure to meet this deadline for this Section are (1) specific performance; (2) termination of the Agreement, and/or (3) the City may withhold occupancy permits for New R&D uses in the Remaining Cannery and/or Park Building. For the purpose of this Section "New" means a use that is not subject to an existing lease as of the Effective Date. If a New R&D use has occupied the Park Building (subject to the required notices to such tenant of the requirements of this Agreement), the City also has the remedy to require such user to cease any R&D use of the Park Building within three (3) years of the tenant's initial occupancy. The City will process such Final Map in expeditiously and in good faith pursuant to Section 6.1. The City will not withhold recordation of the Final Map for acceptance of the BMR/Park Dedication Parcel if the Final Map is otherwise ready to record consistent with this Agreement and the Approvals. Owner's exclusive remedy for the City's Default in processing is (1) specific performance and (2) an extension to this and all remaining deadlines in this schedule.
After Recordation of Final Map Creating Townhome Parcel and BMR/Park Dedication Parcel, but Prior to Acceptance by City and/or Completion of Townhomes.		

#	Deadline	Owner and City Phasing Obligations and Remedies
6	N/A	Once Owner has recorded the Final Map creating the Townhome Parcel and BMR/Park Dedication Parcel, including an offer on the Final Map to dedicate the BMR/Park Dedication Parcel to the City in fee, the City may not withhold demolition permits, grading permits (if not previously issued), building permits, occupancy permits, permits for offsite improvements, or any other post-discretionary entitlements development permits under this Agreement related to the Remaining Cannery, Park Building, Ash Building or Townhomes. The City's exclusive remedies are (1) termination of this Agreement (but not the Approvals) or (2) specific performance. The City will accept the offer of dedication expeditiously and in good faith pursuant to Section 6.2. Owner's exclusive remedy for the City's Default in accepting the offer of dedication is (1) specific performance and (2) an extension to all remaining deadlines in this schedule.
After BMR/Park Dedication Accepted by City but Prior to Completion of Townhomes.		
7	End of Term	The City and Owner acknowledge the Townhomes will be constructed at the time dictated by the market, but in the event the Townhomes have not been constructed by the end of the Term, Owner will pay the full amount of the Public Benefit Fee to the City pursuant to Section 5.8(b). The City's exclusive remedy for an Owner Default in the payment of the Public Benefit fee is specific performance.

In addition to notice and opportunity to cure as provided in Section 9.2, extensions by formal written amendment as provided in Section 10.2, and Force Majeure, the deadlines in this Exhibit C may be extended by each or a combination of the following:

- City Extension: The deadlines set forth in this Exhibit C are subject to a ninety (90) day extension, provided (1) that the Owner submits a written request for an extension prior to the deadline which shall include the rationale for the request and summary of the actions Owner has taken to satisfy the obligation prior to the deadline and (2) the extension request is approved by the City Manager, which such approval shall not be unreasonably withheld or delayed.
- Owner Extension. The deadlines set forth in this Exhibit C are also subject to a maximum of six extensions of 30 days each (no more than 180 days) upon written notice to City and an increase of \$25,000 for each such 30-day extension shall be added to the Public Benefit Fee.
- City Review: The deadlines set forth in this Exhibit C are each contingent upon the City reviewing and providing comments or approving the ministerial permit and improvement plans submitted by Owner within thirty (30) days of submission of complete plans. This 30-day period shall commence anew each time that Owner submits revised plans in response to City comments on the prior version of the permit or improvement plans. Owner shall be solely responsible for submitting complete plans that satisfy all code and City requirements. Owner shall be responsible for payment of all required City building permit fees including costs for City to retain contract plan check services. In the event that City review exceeds 30 days, the relevant deadline set forth in this Section 13 shall be extended one day for each day the City review exceeds 30 days.

EXHIBIT D

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Attn: _____

(Space Above for Recorder's Use)

[FORM OF] ASSIGNMENT OF RIGHTS AND ASSUMPTION OF OBLIGATIONS UNDER DEVELOPMENT AGREEMENT

(_____)

THIS ASSIGNMENT OF RIGHTS AND ASSUMPTION OF OBLIGATIONS UNDER DEVELOPMENT AGREEMENT (this "Assignment") is made and entered into as of _____, 20__, by and between _____, a _____ ("Assignor"), and _____, a _____ ("Assignee"), and approved and agreed to by the City of _____, a _____ ("City").

RECITALS

A. Assignor and City entered into that certain Development Agreement dated as of _____ for the _____ project, and recorded on _____ in the Official Records of the _____ County Recorder's Office ("Official Records") as Document No. _____, (the "Development Agreement"), with respect to approximately _____ acres of land within the City, as more particularly described in Exhibit A attached hereto (the "Property").

B. Assignor and Assignee have entered into that certain Agreement for Purchase and Sale _____ dated _____ (as may be amended from time to time, the "Purchase Agreement"), pursuant to which Assignor intends to transfer to Assignee the Property. Concurrently with transfer of the Property to Assignee, and solely in connection with such transfer in accordance with the Purchase Agreement, Assignor desires to assign to Assignee, and Assignee desires to accept from Assignor the rights, interests and obligations as Owner under the Development Agreement.

C. Section 12.1 of the Development Agreement provides that the Owner shall be released from its obligations under the Development Agreement upon the assignment of the Owner's rights, interests and obligations under the Development Agreement if the City agrees to such release in writing, and Assignor wishes to memorialize that, upon the effective date of this Assignment, as set forth in Section 4 hereof, Assignor is hereby fully released from the duties and obligations of "Owner" with respect to the Development Agreement, including, without limitation, the Project Approvals, which release is hereby given by the City's execution of this Assignment as provided below.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing recitals and for the purposes and in consideration of the mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Assignor and Assignee agree as follows:

1. Defined Terms. All capitalized terms used but not defined in this Assignment shall have the meanings given to them in the Development Agreement.

2. Assignment and Assumption. Assignor hereby assigns to Assignee and Assignee hereby expressly and unconditionally assumes from Assignor, all rights, title, duties, interests and obligations under the Development Agreement.

3. Compliance with Assignment Requirements; Release. Approval of this Assignment by the City pursuant to Section 12.1 of the Development Agreement is an express condition precedent to the effectiveness of this Assignment. Each of Assignor and Assignee has complied with and satisfied all of the requirements and conditions under the Development Agreement with respect to assignment and assumption of the Assigned Interests, and all of the requirements and conditions under the Development Agreement for the release of Assignor from those obligations related to the Assigned Property and the Assigned Interests (collectively, the “Requirements”). Upon approval by the City, Assignor shall be fully released from all of the duties, obligations and liabilities of the “Owner” under the Development Agreement with respect to the Assigned Interests.

Assignee on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases, acquits and discharges, Assignor and its directors, officers, employees and agents of and from any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable attorneys’ fees and costs and consultants’ fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise, whether direct or indirect, known or unknown, foreseen or unforeseen, that Assignee may now have or that may arise at any time on account of or in any way be connected with the Development Agreement.

In connection with the foregoing release, Assignee acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Assignee agrees that the release contemplated by this Section includes unknown claims. Accordingly, Assignee hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section.

Assignor

Assignee

Without limiting the foregoing and notwithstanding any contrary provision in the Development Agreement, City (i) acknowledges and agrees to the terms and conditions of this Assignment and that the Requirements have been satisfied, (ii) hereby fully releases Assignor, and Assignor is fully released, from all of the duties and obligations of the “Owner” under the Development Agreement and (iii) shall look solely towards Assignee with respect to performance, compliance and satisfaction of all covenants and obligations of Developer related to the Assigned Property.

4. Effective Date. Subject to the condition precedent set forth in Section 3 above, this Assignment shall be effective upon the later to occur of (i) the date all Parties have duly executed this Assignment and (ii) the date of the transfer of the Assigned Property to Assignee (the “Effective Date”). The Parties shall use a mutually acceptable escrow agent to record this Assignment Agreement and establish the Effective Date pursuant to mutually acceptable joint escrow instructions.

5. Acknowledgement of the Development Agreement and Project Approvals. Assignee further agrees that: (i) Assignee has had adequate opportunity to obtain and review copies of the Development Agreement and Project Approvals, and all other documents and materials containing or relating to the terms and conditions of the development of the project; (ii) Assignee has read and understands all of the terms and conditions of said documents and materials; (iii) Assignor has not made any representations or warranties with respect to the Assigned Property, the Project Approvals or any other aspect of development of the Property or the Development Agreement, and (iv) with such knowledge and understanding, which includes the nature and extent of the fees, taxes, assessments and other financial mechanisms and obligations described in such documents and materials, Assignee nevertheless has voluntarily, freely and knowingly assumed and agreed to perform all obligations and requirements and be bound by all of the provisions of such documents and materials.

6. Terms of Development Agreement Not Affected. Except that Assignee shall be subject to, and Assignor shall be released from, the Development Agreement, the provisions of the Development Agreement shall remain in full force and effect and shall not be altered, amended or modified by this Assignment.

7. Modifications. This Assignment may be amended, terminated or otherwise modified in any respect only by a writing duly executed on behalf of Assignor and Assignee and approved by the City.

8. Attorneys’ Fees. In the event of any controversy, claim, dispute, or litigation between the parties hereto to enforce or interpret any of the provisions of this Assignment or any right of either party hereto, the non-prevailing party to such litigation agrees to pay to the prevailing party all costs and expenses, including, without limitation, reasonable attorneys’ fees, incurred therein by the prevailing party, including, without limitation, fees incurred during a trial of any action and any fees incurred as a result of an appeal from a judgment entered in such litigation. To so recover, it shall not be necessary that the prevailing party prevail in each and every

one of its claims. Rather, the amount of the award of attorneys' fees shall, in the court's discretion, reflect the degree to which the prevailing party or parties have prevailed in some of their claims.

9. Consent of City. By signature of the City Manager below, the City approves and agrees to the assignment, assumption and release set forth in this Assignment. The City is a party to this Assignment solely respect to Section 3 and Section 4 hereof.

10. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of California, as they apply to contracts executed in and to be carried out entirely within California.

11. Further Assurances. Each party to this Assignment, upon the request of any other party to this Assignment, will execute, acknowledge and deliver such further documents or instruments and perform such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of this Assignment. Each of the individuals executing this Assignment certifies that he or she is duly authorized to do so.

12. Counterparts. This Assignment may be executed in one or more counterparts. All counterparts so executed shall constitute one agreement, binding on all parties, even though all parties are not signatory to the same counterpart.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date and year first above written.

ASSIGNOR:

_____, a _____

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

ASSIGNEE:

_____, a _____

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____

**ACKNOWLEDGED AND APPROVED
TO BY CITY:**

CITY OF PALO ALTO, _____

By: _____

Name: _____

Its: _____

[Signatures must be notarized]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[See attached]